

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

October 22, 2019

**FROM**

**BOB PAGE, Registrar of Voters, Registrar of Voters**

**SUBJECT**

Contract with KNOWiNK, LLC., for the purchase of Electronic Poll Books and support services.

**RECOMMENDATION(S)**

1. Approve **Contract No. 19-696** with KNOWiNK, LLC, 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.
2. Designate the Registrar of Voters as the authorized official to execute non-substantive change orders with KNOWiNK, subject to review and approval by County Counsel, provided that any such change orders further the purpose of the activities associated with the Contract, do not result in additional costs to be incurred by the County, and do not extend the duration of the Contract.
3. Direct the Registrar of Voters to transmit copies of all documents in relation to these change orders to the Clerk of the Board of Supervisors within 30 days of execution.

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

Public Comment: None

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Improve County Government Operations.**

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

**FINANCIAL IMPACT**

Approval of the item will result in the use of additional Discretionary General Funding (Net County Cost) after 2019-20. The total not to exceed cost of the recommended Contract with KNOWiNK, LLC. (KNOWiNK) consists of \$4,265,940 in one-time costs in Year 1, a 10 percent contingency of \$426,594, and annual ongoing costs of \$612,000. Ongoing costs associated with this item are not included in the County's Multi Year Forecast as presented in the 2019-20 Budget.

On June 11, 2019 (Item No. 106), the Board of Supervisors (Board) approved one-time funding in the amount of \$30 million for the purchase and implementation of a new, State-certified voting system. Of that amount, \$19.5 million is currently included in the Registrar of Voters' (ROV) 2019-20 budget. The remaining allocation of \$10.5 million is in General Fund Reserves (Reserves) for additional one-time costs of the voting system replacement project. The one-time costs in Year 1 of this contract will be recommended to be funded from Reserves. Approval of the necessary budget adjustments to ROV's 2019-20 budget is not requested at this time, but

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will be included on a future quarterly countywide budget report presented to the Board for approval.

**BACKGROUND INFORMATION**

The recommended Contract will enable ROV to more efficiently conduct elections and provide voters with modernized, easy-to-use, and accessible voting solutions, certified by the Secretary of State (SOS).

Replacing paper polling place voter rosters with electronic poll books will enable poll workers to more efficiently check in voters on Election Day and better identify the correct ballot type for each voter. Electronic poll books will also enable poll workers to request – in writing or by video chat with ROV – additional resources or assistance during an election.

Finally, electronic poll books will provide ROV with an operationally and cost effective way to provide mandated conditional voter registration and voting (also known as "same day voting") at all early voting sites and polling places starting with the March 3, 2020 Presidential Primary. This became a new required service in all voting locations as a result of Senate Bill 72 (Senator Umberg) – Conditional voter registration: provisional ballots, which Governor Newsom signed into law on October 8, 2019, and will be effective January 1, 2020.

ROV has provided conditional voter registration services during prior elections at its office and early voting sites, utilizing computer workstations. This service must now be expanded to approximately 400 polling places in a countywide election.

On February 27, 2019, the SOS announced that most of California's voting systems would be decertified effective August 27, 2019, including the voting system the County was using at the time, and that these decertified voting systems cannot be used for any election after February 27, 2020.

On March 19, 2019 (Item No. 35), the Board authorized ROV to initiate a formal competitive procurement for a State-certified replacement voting system, electronic poll books, and mobile ballot printers.

ROV began the procurement process by releasing an Invitation to Negotiate (ITN). On July 9, 2019 (Item No. 40), the Board approved an agreement with Dominion Voting Systems, Inc. for the purchase of a new voting system.

The recommended Contract includes a non-standard provision that limits KNOWiNK's liability to indemnify the County if KNOWiNK's software is modified or misused by the County. The County standard contract terms do not include a limitation of liability. This liability limitation provision is commonly requested by software vendors.

Additionally, Attachment F to the recommended Contract is KNOWiNK's Master Software License and Services Agreement (MSA), which is non-standard and requires the County to accept a third-party license for Apple iOS operating software since the electronic poll books are Apple products – iPads – which come with pre-loaded Apple iOS software. The Apple license is attached to the MSA as Exhibit C. If anything in the MSA is in conflict with the provisions of the Contract, the Contract provisions are superior to the MSA provisions.

The Apple iOS license includes the following non-standard terms:

**Contract with KNOWiNK, LLC., for the purchase of Electronic Poll Books and support services.**

**October 22, 2019**

1. Disclaimer of any warranty of non-infringement and no indemnity for infringement claims.
  - 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 attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services.
2. Limitations of liability to the County of a maximum of \$250.
  - The County standard contract does not include a limitation of liability.

Potential impacts of these non-standard provisions include:

1. The disclaimer of a warranty of non-infringement, coupled with the lack of indemnity for intellectual property infringement means that, should the County be sued for intellectual property infringement based on its use of the Apple software, the County will be liable for the costs of defense and damages. While infringement claims against end users are rare, they have been known to occur, and the County could be responsible for defense costs and damages, which could exceed the total contract amount.
2. Apple caps its liability to the County at a maximum of \$250 for all claims arising under the license. Claims could exceed the liability cap and the contract amount leaving the County financially liable for the excess.

Approval of the recommended Contract will enable ROV to implement electronic poll books during the March 3, 2020 Presidential Primary. Within seven days of Contract execution, ROV and KNOWiNK will develop and agree to an initial project plan and schedule. The Contract authorizes the Registrar of Voters to agree to the plan and any future modifications to the plan.

Recommendation No. 2 would provide the Registrar of Voters with the authority to execute change orders, subject to review and approval of County Counsel, provided that such change orders would not increase the cost or term of the Contract. For example, the recommended Contract includes the purchase of 3,000 electronic poll books with a software license for each one. After using the electronic poll books in the Presidential Primary Election, ROV will evaluate whether it needs to use more or less units and licenses for subsequent elections. An increase or decrease in quantity of electronic poll books and/or licenses would require a change order. The recommended Contract increase a 10 percent contingency of \$426,594 should ROV determine additional electronic poll books and licenses are needed.

**PROCUREMENT**

On March 19, 2019, the Board approved the use of a formal, competitive ITN procurement process to select and purchase a State-certified replacement voting system. On March 28, 2019, ROV issued ITN No. ROV119-ROV3324 in conjunction with the Purchasing Agent. The Department received no proposals for electronic poll books. On July 17, 2019, ROV reissued ITN No. ROV120-ROV3459 for electronic poll books. ROV received proposals from both known vendors with State-certified systems by the submittal deadline as follows:

<b>Vendor</b>	<b>Vendor Location</b>	<b>One-time Costs (Initial Purchase)</b>	<b>Ongoing Costs</b>
KNOWiNK, LLC.	St. Louis, MO	\$3,872,500	\$2,556,000

**Contract with KNOWiNK, LLC., for the purchase of Electronic Poll Books and support services.  
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Tenex Software Solutions, Inc.	Tampa, Florida	\$4,269,000	\$2,544,000
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An evaluation team facilitated by the Purchasing Department, including staff from ROV and the Information Services Department evaluated the proposals based on qualifications and experience, technical review, cost, references, and system demonstration. The evaluation committee recommended KNOWiNK for a contract based on the overall best value to the County. Award and denial letters were issued on October 10, 2019 via email to each respective proposer.

ROV and Purchasing negotiated a contract with KNOWiNK that resulted in a higher initial purchase cost than KNOWiNK's proposal amount \$3,872,500 due to the cost of providing an average of 30 days cellular service in relation to the use of the electronic poll books for the 2020 Presidential Primary Election and taxes. These same costs would have also increased the amount of a contract with Tenex Software Solutions, Inc. if it had been selected to provide electronic poll books to the County since neither vendor's cost proposal included cellular service and taxes.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Penny Alexander-Kelley, Chief Assistant County Counsel, 387-4270) on October 18, 2019; Purchasing (Ricardo Salazar, Supervising Buyer, 386-8305) on October 15, 2019; Information Services (Robert Pittman, Chief Information Security Officer, 388-5510) on October 16, 2019; Finance (Elias Duenas, Administrative Analyst, 387-4052) on October 18, 2019; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on October 18, 2019.

**Contract with KNOWiNK, LLC., for the purchase of Electronic Poll Books and support services.  
October 22, 2019**

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

**DEFERRED/APPROVED**

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

Lynna Monell, CLERK OF THE BOARD

BY   
DATED: October 22, 2019



cc: ROV- Page w/agree  
Contractor c/o ROV w/agree  
File- w/agree (BAI only)  
File- Confidential Files  
vh 10/22/2019



Contract Number

19-696

SAP Number

### Registrar of Voters

Department Contract Representative      Bob Page  
Telephone Number                              909-387-2100

Contractor    KNOWINK, LLC  
Contractor Representative  
Telephone Number  
Contract Term                                      10/22/2019 through 10/21/2024  
Original Contract Amount                      \$7,140,534  
Amendment Amount  
Total Contract Amount                         \$7,140,534  
Cost Center                                         6800001000

**IT IS HEREBY AGREED AS FOLLOWS:**

**WHEREAS**, the County of San Bernardino (County) desires to designate a contractor of choice to provide the hardware, software, maintenance and support for Electronic Poll Books,; and

**WHEREAS**, the County conducted a competitive process for such hardware, software, maintenance and support for Electronic Poll Books and KNOWINK, LLC (Contractor) was the successful proposer, and

**WHEREAS**, based upon and in reliance on the representations of Contractor in its response to the County's Invitation to Negotiate (ITN), the County finds Contractor qualified to provide hardware, software, maintenance and support for Electronic Poll Books, as more specifically defined below; and

**WHEREAS**, the County desires that such hardware, software, maintenance and support for Electronic Poll Books be provided by Contractor and Contractor agrees to perform as set forth below;

**NOW, THEREFORE**, the County and Contractor mutually agree to the following terms and conditions:

**A. DEFINITIONS**

**A.1. Acceptance:** Any variations thereof, means the successful completion by the County of the acceptance testing performed on each component of Contractor's Hardware and Software, after delivery in accordance with testing criteria developed and agreed to by the parties.

**A.2. Board:** The San Bernardino County Board of Supervisors.

- A.3.** Contract: The Contract between the County and the Contractor resulting from the award issued pursuant to the Invitation to Negotiate (ITN).
- A.4.** Contractor: KNOWiNK, LLC.
- A.5.** Election: A single election event administered by the County including any absentee and early voting activity associated with the election event. Election shall not mean any follow-on events occurring after the initial election event, including without limitations, run-offs or recall replacements elections. Any follow on event shall be considered an Election in and of itself.
- A.6.** Election Management System (EMS): A combination of software components that manage the County's voter registration, districts, contests, candidates and other related information.
- A.7.** Electronic Poll Books: A combination of hardware and software components that contain an electronic list of registered voters that may be delivered to the polling location which allows election officials to review and/or maintain voter register information for an election, but does not actually count votes. This software or hardware is used in place of paper-based poll books. An electronic poll book shall contain voter registration data including but not limited to name, address, district/precinct, party preference, and voter status.
- A.8.** Hardware: Includes the hardware identified in Attachment A, which is the same document as Exhibit B in the Master Software License and Services Agreement (Attachment F), which is hereby incorporated into this Contract
- A.9.** Project: means the initial implementation of the Electronic Poll Books, including delivering, installing, testing, and accepting of the hardware and software, as well as the Contractor provided training on how to use the equipment and election support.
- A.10.** Secretary of State (SOS): the State of California Agency statutorily empowered to oversee all federal and state elections within California and which tests and certifies all voting equipment used in the state.
- A.11.** Services: Includes all maintenance and support, inclusive of all of the services and supplies identified on Attachment A, which is the same document as Exhibit B in the Master Software License and Services Agreement (Attachment F), which is hereby incorporated into this Contract.
- A.12.** Software: Includes the software identified in Attachment A, which is the same document as Exhibit B in the Master Software License and Services Agreement (Attachment F), which in hereby incorporated into this Contract.
- A.13.** Subcontractor: An individual, company, firm, corporation, partnership or other organization, not in the employment of or owned by Contractor who is performing Services on behalf of Contractor under the Contract or under a separate contract with or on behalf of Contractor.

## **B. CONTRACTOR RESPONSIBILITIES**

- B.1.** Assign a KNOWiNK project manager ("KNOWiNK Project Manager") to oversee the general operations of the Project. The KNOWiNK Project Manager will be the primary contact for all Project needs. The KNOWiNK Project Manager will be responsible for all deliverables and Services including, resource planning and coordination, product delivery, issue resolution and for all administrative matters such as invoices and payments.
- B.2.** Assist in the Acceptance testing process.

- B.3.** Provide invoices to County pursuant to the price schedule in Attachment A, which is hereby incorporated into this Contract, and the payment terms described in Section G herein.
- B.4.** Provide Services described in Attachment B, Scope of Work, which is hereby incorporated into this Contract and in accordance with the Master Software License and Services Agreement set forth in Attachment "F".
- B.5.** Should County want to purchase additional equipment i.e. hardware, Contractor will honor the pricing set forth in Attachment A, which is the same document as Exhibit B in the Master Software License and Services Agreement (Attachment F), for the Term of the Contract and any extensions.
- B.6.** If needed, Contractor will provide ongoing election support as described in Attachment A, which is the same document as Exhibit B in the Master Software License and Services Agreement (Attachment F), which is hereby incorporated into this Contract.
- B.7.** Contractor shall deliver the equipment to the location specified by the County.
- B.8.** Contractor will work with County's Information Services Department and Registrar of Voters on security matters as discussed in Attachment D, which is hereby incorporated into this Contract.
- B.9.** The County's Representative, the Registrar of Voters, is authorized to agree to modifications to the response process pursuant to the deliverables and expectations established in the Incident Management Process, section F.1 including monitoring services of the network, servers and other critical infrastructure or components during an election period.
  - B.9.1.** Contractor will provide Incident Management Services as described in Attachment E.

## **C. GENERAL CONTRACT REQUIREMENTS**

### **C.1 Recitals**

The recitals set forth above are true and correct and incorporated herein by this reference.

### **C.2 Contract Amendments**

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

### **C.3 Contract Assignability**

Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.

### **C.4 Contract Exclusivity**

This is not an exclusive Contract. The County reserves the right to enter into a contract with other contractors for the same or similar hardware, software, maintenance, and support for Electronic Poll Books. The County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

### **C.5 Attorney's Fees and Costs**

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.



**C.6 Background Checks for Contractor Personnel**

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing Services. If requested by the County, Contractor shall provide the results of the background check of each to the County. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility.

**C.7 Change of Address**

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

**C.8 Choice of Law**

This Contract shall be governed by and construed according to the laws of the State of California.

**C.9 Compliance with County Policy**

In performing the Services and while at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor personnel or may be made available to Contractor or Contractor personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate.

County shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

**C.10 Confidentiality**

Contractor shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving Services pursuant to this Contract, except for statistical information not identifying any participant. Contractor shall not use or disclose any identifying information for any other purpose other than carrying out the Contractor's obligations under this Contract, except as may be otherwise required by law. Contractor shall execute and comply with the attached Business Associate Agreement (Attachment C). This provision will remain in force even after the termination of the Contract.

**C.11 Primary Point of Contact**

Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor

shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

**C.12 County Internship Initiative**

Contractor agrees to be contacted by the County to solicit its participation in an internship initiative known as GenerationGo! Career Pathways, involving the potential placement and hiring of interns by Contractor's business. Contractor is encouraged, and agrees to make good faith efforts, to utilize the County's program to aid the **County's Vision for a skilled workforce and jobs that create countywide prosperity**, and its **goal to Create, Maintain and Grow Jobs and Economic Value in the County**. The County's objective with its internship initiative is to focus on training, education, employment and support services to develop a more highly-educated and trained workforce. When participating in the County's internship initiative, the Contractor remains an independent contractor and shall not be construed as agents, officers, or employees of the County. More information about the County's GenerationGo! Career Pathways Program can be located at <http://wp.sbcounty.gov/workforce/career-pathways/>.

**C.13 County Representative**

The *Registrar of Voters* or his/her designee shall represent the County in all matters pertaining to the Services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

**C.14 Damage to County Property**

Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County, as determined at the County's sole discretion.

**C.15 Debarment and Suspension**

Contractor certifies that neither it nor its principals or subcontractors is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

**C.16 Drug and Alcohol Free Workplace**

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

**C.16.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.

**C.16.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.

**C.16.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as

part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

**C.17 Duration of Terms**

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

**C.18 Employment Discrimination**

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

**C.19 Environmental Requirements**

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the county in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County's environmentally preferable purchases. Contractor must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form

**C.20 Improper Influence**

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

**C.21 Improper Consideration**

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer,

employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

**C.22 Informal Dispute Resolution**

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

**C.23 Legality and Severability**

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

**C.23.1 Licenses, Permits and/or Certifications**

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

Per California Elections Code section 2550(b) requires that electronic poll books used in California be certified by the SOS.

**C.24 Material Misstatement/Misrepresentation**

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

**C.25 Mutual Covenants**

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

**C.26 Nondisclosure**

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled

or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

**C.27 Notice of Delays**

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

**C.28 Ownership of Documents**

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of the County upon payment for services (and product, if applicable). All such items shall be delivered to County at the completion of work under the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

**C.29 Participation Clause**

The County desires that Counties within the State of California requiring the same services provided herein may at their option and through the County Purchasing agent, avail themselves of this Contract. Upon notice, in writing, the Contractor agrees to the extension of the terms of a resultant contract with such governmental bodies as though they have been expressly identified in this bid, with the provisions that such governmental body shall make purchases directly through and to the Contractor. The County will not be liable for any such purchase made between the Contractor and another governmental body who avails themselves of this contract.

**C.30 Air, Water Pollution Control, Safety and Health**

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

**C.31 Records**

Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Contractor's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars which state the administrative requirements, cost principles and other standards for accountancy.

All records pertaining to Services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under the Agreement or until all pending County, State and Federal audits are completed, whichever is later.

**C.32 Relationship of the Parties**

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto. In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County of San Bernardino.

Any provision of this Contract that may appear to give the County any right to direct the Contractor concerning the details of performing the services/Scope of Work, or to exercise any control over such performance, shall mean only that the Contractor shall follow the direction of the County concerning the end results of the performance.

**C.33 Release of Information**

No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor's relationship with County may be made or used without prior written approval of the County.

**C.34 Representation of the County**

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County of San Bernardino.

**C.35 Strict Performance**

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

**C.36 Subcontracting**

Contractor agrees not to enter into any subcontracting Contracts for work contemplated under the Contract without first obtaining written approval from the County. Any subcontractor shall be subject to the same terms and conditions as Contractor. Contractor shall be fully responsible for the performance and payments of any subcontractor's contract.

Contractor shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the Services to County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Section G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Contractor Personnel.

For any subcontractor, Contractor shall:

**C.36.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and

**C.36.2** Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.

**C.36.3** Include in the subcontractor's subcontract substantially similar terms as are provided in Sections B. Contractor Responsibilities, C. General Contract Requirements and G. Insurance and Indemnification.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County.

**C.37 Subpoena**

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or

other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

**C.38 Termination for Convenience**

The County and the Contractor each reserve the right to terminate the Contract, for any reason, with a ninety (90) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

**C.39 Time of the Essence**

Time is of the essence in performance of this Contract and of each of its provisions.

**C.40 Venue**

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

**C.41 Conflict of Interest**

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

Contractor acknowledges and agrees that it will not submit a bid, or enter into an agreement with a third party, for the project. Contractor agrees not to affiliate with, or receive financial consideration from, any third party in connection with this project, except as specifically authorized under this Contract.

**C.42 Former County Administrative Officials**

Contractor agrees to provide, or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant

department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

**C.43 Disclosure of Criminal and Civil Procedures**

The County reserves the right to request the information described herein from the Contractor. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

**C.44 Copyright**

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data and statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the County of San Bernardino as the funding agency and Contractor as the creator of the publication. No such materials, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the County prior to publication.

**C.45 Reserved**

**C.46 Iran Contracting Act**

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract



Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

**C.47 Reserved**

**C.48. Reserved**

**D. TERM OF CONTRACT**

This Contract is effective October 22, 2019 through October 21, 2024 but may be terminated earlier in accordance with provisions of this Contract.

**E. COUNTY RESPONSIBILITIES**

**E.1** Assign a County project manager ("County Project Manager"), who shall be responsible for review, analysis and acceptance of the System and the coordination of County personnel, equipment, vehicles and facilities. The County Project Manager shall be empowered to make decisions on behalf of the County with respect to the work being performed under this Contract. The County Project Manager shall also have direct access to the County's top management at all times for purposes of problem resolution

**E.2** County shall provide reasonable access and entry into all County property required by the Contractor to perform the Services described in this Contract. All such access and entry shall be provided at County's expense.

**F. MUTUAL RESPONSIBILITIES**

**F.1.** Incident Management Process – within 30 days of execution of the Contract, the parties will meet to review and potentially revise the Incident Management Process (Attachment E), which is hereby incorporated into this Contract, including additional monitoring during an election period. The parties agree to follow the deliverables established in the Incident Management Process and as set forth in section B.1., above. The Parties agree to meet prior to any election to reevaluate the Incident Management Process and if necessary make modifications. The County's Representative, the Registrar of Voters, is authorized to agree to modifications to the Incident Management Process.

**F.2.** Deliverables/Implementation Timelines (Project Plan) – within seven (7) calendar days of execution of the Contract, the parties will meet to complete a detailed Project Plan that will establish specific dates to carry out Contractor's Responsibilities as set forth in Section B., above. The deliverables/implementation may be modified by either party upon mutual agreement and the requesting party must notify the other party in writing within to two (2) business days. The County's Representative, the Registrar of Voters, is authorized to agree to the Project Plan and modifications thereto.

**G. FISCAL PROVISIONS**

**G.1.** The maximum amount of payment under this Contract shall not exceed \$7,140,534. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's services and expenses incurred in the performance hereof, including travel and per diem.

- G.2. The Contractor will provide an invoice for the Hardware and Software based upon the pricing in Attachment A within 20 days of each shipment for the Hardware and Software contained within that shipment.
- G.3. The Contract will provide an invoice annually for ongoing costs set forth in Attachment A.  
Payment terms are net 60 days from receipt of invoice.
- G.4. The Contractor will provide an invoice within 20 days of providing Election Services.  
Payment terms are net 60 days from receipt of Services and/or invoice, whichever is later.
- G.5. Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.
- G.6. County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.
- G.7. Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.
- G.8. Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.
- G.9. Contractor shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

**H. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

**H.1. Indemnification**

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 attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against County, or County receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, County will use reasonable efforts to notify Contractor promptly of such lawsuit, claim or election. However, County's failure to provide or delay in providing such notice will relieve Contractor of its obligations only if and to the extent that such delay or failure materially prejudices Consultant's ability to defend such lawsuit or claim. County will give Contractor sole control of the defense (with counsel reasonably acceptable to County) and settlement of such claim; provided that Contractor may not settle the claim or suit absent the written consent of County unless such settlement (a) includes a release of all claims pending against County, (b) contains no admission of liability or wrongdoing by County, and (c) imposes no obligations upon County other than an

obligation to stop using the goods or services that are the subject of the claim. In the event that Contractor fails to or elects not to defend County against any claim for which County is entitled to indemnity by Contractor, then Contractor shall reimburse County for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from County. After thirty (30) days, County will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by County to Contractor. This shall not apply to any judgment or settlement amount, which amounts County shall be entitled to notify, invoice or debit Contractor's account at any time; and County, at its sole discretion, may settle the claim or suit.

If, in Contractor's opinion, any goods or services become, or are likely to become, the subject of a claim of infringement of Intellectual Property Rights, Contractor may, at its option: (i) procure for County the right to continue using the goods or receiving the services; (ii) replace or modify the goods or services to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is feasible, in the reasonable judgment of Contractor, County shall cease use of the goods or services upon written notice from Contractor, and Contractor shall provide County with a pro-rata refund of the unearned fees paid by County to Contractor for such goods or services.

KNOWiNK will not defend or indemnify County if any claim of infringement or misappropriation to the extent that: (i) the allegation is a result of a modification of the Software or System not performed or approved by KNOWiNK, (ii) the Software or System is not being used in accordance with the Documentation, (iii) the allegation is a result of use of the Software or System in combination with any non-KNOWiNK supplied third party product, or (iv) the allegation arises from KNOWiNK's compliance with directions provided by County, relates solely to express written instructions that County provided to KNOWiNK, and is not attributable to KNOWiNK's exercise of any discretion in determining how to comply with County's directions.

The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. Nothing herein is intended to relieve the County from its own negligence or misfeasance or to assume any such liability for the County by the Contractor.

## **H.2 Additional Insured**

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

## **H.3 Waiver of Subrogation Rights**

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

## **H.4 Policies Primary and Non-Contributory**

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

**H.5 Severability of Interests**

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

**H.6 Proof of Coverage**

The Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

**H.7 Acceptability of Insurance Carrier**

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

**H.8 Deductibles and Self-Insured Retention**

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

**H.9 Failure to Procure Coverage**

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

**H.10 Insurance Review**

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

**H.11** The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage

does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

**H.11.1** Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this contract.

If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

**H.11.2** Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

**H.11.3** Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

**H.11.4** Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

**H.11.5** Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

or

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

**H.11.6** **Cyber Liability Insurance** - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

**I. RIGHT TO MONITOR AND AUDIT**

**I.1** The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.

**I.2** All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, whichever is later.

**J. CORRECTION OF PERFORMANCE DEFICIENCIES**

**J.1.** In the event of a problem or potential problem that could impact the quality or quantity of work, Services, or the level of performance under this Contract, Contractor shall notify the County within one (1) working day, in writing and by telephone.

**J.2.** Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.

**J.3.** Contractor's Primary Contact and County Representative shall attempt in good faith to promptly resolve any dispute, controversy or claim arising out of this Contract. If these representatives are unable to resolve a dispute, controversy or claim with ten (10) days after the initial request for a meeting, then the dispute shall be submitted to an executive-level performance review.

If the Primary Contact and County Representative are not successful in resolving the dispute, negotiations shall be conducted by the Chief Executive Officer, or designee, and the highest level executive for Contractor. If these representatives are unable to resolve the dispute within ten (10) days after the representatives have commenced negotiations, or 20 days have passed since the initial request for negotiations at this level, the Parties may agree in writing to submit the dispute to mediation

**J.4.** In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

**J.4.1.** Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or

**J.4.2.** Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or

**J.4.3.** Withhold funds pending duration of the breach; and/or

**J.4.4.** Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item "b" of this paragraph; and/or

**J.4.5.** Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

**J.5** Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provision of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either Party shall not constitute a waiver of the right to pursue other available remedies.

## **K. NOTICES**

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

*County of San Bernardino  
Registrar of Voters  
777 East Rialto Avenue  
San Bernardino, CA 92415*

*KNOWiNK, LLC  
2111 Olive Street  
St. Louis, MO 63103*

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

## **L. ENTIRE AGREEMENT**

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

## **M. ORDER OF PRECEDENCE**

If there is a conflict between the documents comprising this Contract, the following order of precedence shall apply:

**M.1.** Applicable federal and State laws, regulations and policies;

- M.2.** The terms and conditions in the body of this Contract;
- M.3.** The terms of the Attachments and/or other documents attached to this Agreement, provided that no order of precedence shall be applied among such Attachments and/or other documents;
- M.4.** The KNOWiNK Master Agreement (Attachment F);
- M.5.** KNOWiNK Response to the ITN (Attachment B);
- M.6.** County ITN (Attachment Y);

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IN WITNESS WHEREOF, the County of San Bernardino and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

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COUNTY OF SAN BERNARDINO

KNOWINK, LLC

(Print or type name of corporation, company, contractor, etc.)

►   
Curt Hagman, Chairman, Board of Supervisors

By ►   
(Authorized signature - sign in blue ink)

Dated: 10/22/19  
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Name KEVIN J. SCHWOTT  
(Print or type name of person signing contract)



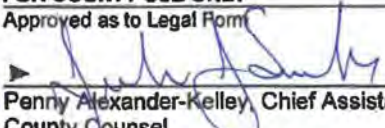
By   
Wynna Monell, Deputy  
Clerk of the Board of Supervisors of the County of San Bernardino

Title LFO  
(Print or Type)

Dated: 10/21/19

Address 2111 Olive Street  
St. Louis, MO 63103

**FOR COUNTY USE ONLY**

Approved as to Legal Form  
►   
Penny Alexander-Kelley, Chief Assistant County Counsel  
Date 10/21/19

Reviewed for Contract Compliance  
► \_\_\_\_\_  
Date \_\_\_\_\_

Reviewed/Approved by Department  
►   
Bob Page, Registrar of Voters  
Date 10/21/19

**Electronic Poll Book - Price List , KNOWiNK**

<b>HARDWARE - Cellular iPads</b>				<b>Ongoing Costs - Maintenance &amp; Support</b>			<b>Ongoing Costs - Extended Warranty (optional)</b>	
Description (Make/Model, etc.): include optional componenets such as cases, travel bags etc.	# of Units	Cost per Unit	One time Subtotal	# of Units	Ongoing Costs	Ongoing Subtotal	Initial Warranty	Cost of Warranty
							Period	
Cellular Devices (iPad)	3,000	\$ 431.00	\$ 1,293,000.00			\$ -	1 year	Apple Care one time purchase (2 years)
Apple Care Warranty (2 years) One-time purchase	3,000	\$ 70.00	\$ 210,000.00					
1360 Swivel Stand	3,000	\$ 35.00	\$ 105,000.00			\$ -	3 year	Included in Annual Licensing Fee
920 Case with Custom Foam Nanuk	3,000	\$ 120.00	\$ 360,000.00			\$ -	3 year	Included in Annual Licensing Fee
Stylus	6,000	\$ 2.50	\$ 15,000.00			\$ -	3 year	Included in Annual Licensing Fee
Star Micronics Receipt Printer	3,000	\$ 280.00	\$ 840,000.00			\$ -	3 year	Included in Annual Licensing Fee
Discount (Please list as percentage)		0%	\$ -			\$ -		
<b>Sub-Total</b>			<b>\$ 2,823,000.00</b>	<b>Sub-Total</b>		<b>\$ -</b>	<b>Sub-Total</b> \$ -	

<b>Cellular Services</b>				<b>Ongoing Costs - Maintenance &amp; Support</b>		
Description (Make/Model, Version, etc.)	# of Units	Cost per Unit	One time Subtotal	# of Units	Ongoing Costs	Ongoing Subtotal
Per Election Usage charge (30 day period)	3,000	\$ 30.00	\$ 90,000.00	6,000	\$ 30.00	\$ 180,000.00
Discount (Please list as percentage)		0%	\$ -			\$ -
<b>Sub-Total</b>			<b>\$ 135,000.00</b>	<b>Sub-Total</b>		<b>\$ 225,000.00</b>

<b>SOFTWARE</b>				<b>Ongoing Costs - Licensing</b>		
Description (Version, etc.)	# of Units	Cost per Unit	One time Subtotal	# of Units	Ongoing Costs	Ongoing Subtotal
oll Pad software license certified by the State of CA (1,001 - 2000)	1,000	\$ 325.00	\$ 325,000.00	1,000	\$ 125.00	\$ 125,000.00
oll Pad software license certified by the State of CA (2,001 - 3,000)	1,000	\$ 300.00	\$ 300,000.00	1,000	\$ 125.00	\$ 125,000.00
ulse Administrative System (Included)	1	\$ -	\$ -	1	\$ -	\$ -
included server-side ePulse applications:						
Real Time Connectivity						
Advanced Communications Module						
IMS Gateway Communication Module (SOS Certified)						
Issue Tracking/Help Desk						
Asset Tracking for devices			\$ -			\$ -
oll Worker Management			\$ -			\$ -
Discount (Please list as percentage)		0%	\$ -			\$ -
<b>Sub-Total</b>			<b>\$ 975,000.00</b>	<b>Sub-Total</b>		<b>\$ 375,000.00</b>

Initial License Included; updates included for duration of contract

Annual Fee starting in Year 2

**Electronic Poll Book - Price List , KNOWiNK**

<b>SERVICES: Implemenation &amp; Initial Training</b>				<b>One-Time Costs</b>			<b>Ongoing Costs - Support</b>		
Description of Service	# of Units	Cost per Unit	One time Subtotal	# of Units	Ongoing Costs	Ongoing Subtotal	All Travel Cost are included in per unit cost		
Training Train the Trainer and Adminstrative Software Training (Per Person/Day)	3	\$ 2,500.00	\$ 7,500.00			\$ -			
Documentation	1	\$ 10,000.00	\$ 10,000.00			\$ -			
Initial On- Site Poll Worker Training (Per Person Per Day)		\$ 2,000.00	\$ -			\$ -			
Webex Training	1	\$ -	\$ -			\$ -			
			\$ -			\$ -			
			\$ -			\$ -			
			\$ -			\$ -			
Discount (Please list as percentage)		0%	\$ -			\$ -			
		<b>Sub-Total</b>	<b>\$ 17,500.00</b>			<b>Sub-Total</b>	<b>\$ -</b>		

<b>SERVICES: Election Training &amp; Support</b>				<b>One-Time Costs</b>			<b>Ongoing Costs - Support</b>		
Description of Election Support Service(s):	# of Units	Cost per Unit	One time Subtotal	# of Units	Ongoing Costs	Ongoing Subtotal	All Travel Cost are included in per unit cost		
Per Election Setup & Post Election Data Recovery	Included	Included	Included			\$ -	Included		
24/7 Technical Support (toll free line access)	Included	Included	Included			\$ -	Included		
Election On-Site Support - First Election	Included	Included	Included			\$ -	Included		
Election On-Site Support - Subsequent 2 (Per Person/Day)	0	\$ 2,000.00	\$ -	6	\$ 2,000.00	\$ 12,000.00			
			\$ -			\$ -			
Discount (Please list as percentage)		0%	\$ -			\$ -			
		<b>Sub-Total</b>	<b>\$ -</b>			<b>Sub-Total</b>	<b>\$ 12,000.00</b>		

		<b>Purchase Sub-total</b>	<b>\$ 3,950,500.00</b>	<b>Annual Ongoing Costs</b>			<b>Extended Warranty (optional) Annual Sub-total</b>	<b>\$</b>	<b>-</b>
				<b>Sub-Total</b>	<b>\$ 612,000.00</b>				
		<b>Discount</b>		<b>Discount</b>			<b>Discount</b>		
		<b>Trade Allowance</b>							
		<b>One-time Purchase</b>	<b>\$ 3,950,500.00</b>	<b>Annual Cost</b>	<b>\$ 612,000.00</b>		<b>Annual Cost</b>	<b>\$</b>	<b>-</b>



**Invitation to Negotiate No. ROV120-ROV3459  
Electronic Poll Books**

**San Bernardino County  
Registrar of Voters  
777 E. Rialto Ave.  
San Bernardino, CA 92415  
July 17, 2019**

## I. INTRODUCTION

### A. Purpose

The San Bernardino County Registrar of Voters (County) is seeking Proposals from interested and qualified Proposers to provide a cost-effective electronic poll book which allows election officials to provide an electronic list of registered voters for every election to every polling place throughout the County.

### B. Invitation to Negotiate (ITN) Contact

All correspondence must be submitted to the person identified below:

San Bernardino County Purchasing Department  
Attn: Ricardo Salazar, Supervising Buyer  
777 East Rialto Avenue  
San Bernardino, CA 92415  
(909) 386-8305 Phone  
(909) 387-2666 Fax  
Ricardo.Salazar@pur.sbcounty.gov

Proposals must be submitted electronically through the County Electronic Procurement Network (ePro), or via hard copy with original signature submitted to the address indicated above. Proposals will not be accepted by email or facsimile. All Proposers must register in the ePro system prior to the date and time to submit the proposal.

### C. Contract Term

Services to be provided under this ITN are outlined under Attachment M, Scope of Work. The Contract period will be a minimum of 5 years.

### D. Location of Services

Location(s) where Services are to be provided, completed and managed is at 777 E. Rialto Ave., San Bernardino, CA 92415. The Proposer must include in Proposal, Attachment E – Cost Proposal Sheet(s), all transportation, lodging, and per diem costs sufficient to pay its personnel and travel to the aforementioned locations.

### E. Assistance to Proposers with a Disability

Proposers with a disability may request accommodation regarding the means of communicating this ITN or participating in the procurement process. For more information, contact the ITN Contact no later than five days prior to the Deadline for Proposals.

## II. PROPOSAL TIMELINE

ITN Release	July 17, 2019
Deadline for Proposals	July 26, 2019 at 4:00 pm PST
Oral Presentations and Demonstrations / Preliminary Evaluation	July 29 – August 7, 2019
Concurrent Negotiations	August 8 – 16, 2019
Best and Final Offer Deadline for Proposals	August 23, 2019
Final Evaluation	August 30, 2019
Tentative Notice of Intent to Award	Week of September 2, 2019
Tentative Contract Award	September 2019

Questions regarding the contents of this ITN must be submitted in writing to the ITN Contact prior to July 29, 2019, the commencement of Oral Presentations and/or Demonstrations.

### III. DEFINITIONS

Capitalized terms used in this ITN shall have the meanings given to them in the ITN and as defined below:

Board: The San Bernardino County Board of Supervisors.

Contract: The Contract between the County and the Proposer resulting from the award issued pursuant to this ITN to the successful Proposer.

Contractor: Any individual, company, firm, corporation, partnership or other organization to whom a contract award is made by the County.

Election Management System (EMS): A combination of software components that manage the County's voter registration, districts, contests, candidates and other related information.

Electronic Poll Books: A combination of hardware and software components that contain an electronic list of registered voters that may be delivered to the polling location which allows election officials to review and/or maintain voter register information for an election, but does not actually count votes. This software or hardware is used in place of paper-based poll books. An electronic poll book shall contain voter registration data including but not limited to name, address, district/precinct, party preference, voter status, etc.

Facilitator: A County Purchasing Department buyer tasked with managing the processes of the evaluation panel.

Proposal: The offer to provide goods or services at specified prices and/or other conditions outlined in the ITN.

Purchasing Agent: The Director of the County Purchasing Department.

Invitation to Negotiate (ITN): A formal competitive process involving single or concurrent negotiations and culminating in a best and final offer, whereby suggestions contained in the vendor proposals can be used to modify the scope of work, in order to achieve best value.

Services: The requested services described in this ITN.

Subcontractor: An individual, company, firm, corporation, partnership or other organization, not in the employment of or owned by Contractor who is performing services on behalf of Contractor under the Contract or under a separate contract with or on behalf of Contractor.

### IV. PROPOSAL CONDITIONS

#### A. Authorized Signers

All proposals must be signed by an individual authorized to bind the Proposer to the provisions of the ITN.

#### B. Term of Offer

Proposals shall remain open, valid and subject to acceptance anytime within 18 months after the best and final proposal submission.

#### C. Required Review

Proposers should carefully review this ITN for defects and questionable or objectionable material. Comments from Proposers concerning defects and objectionable material in this ITN must be made in writing and received by the ITN contact prior to the Deadline for Proposals. This will allow issuance of any necessary amendments or addendums to the ITN. It will also help prevent the opening of a defective ITN and exposure of Proposals upon which an award could not be made. Protests based on any omission or error, or on the content of this ITN, may be disallowed if not submitted in writing to the attention of the ITN Contact prior to the Deadline for Proposals.

#### D. Incurred Costs

The County is not obligated to pay any costs incurred by Proposer in the preparation of a Proposal in response to this ITN. Proposers agree that all costs incurred in developing a Proposal are the Proposer's responsibility.

**E. Amendments/Addendums to ITN**

The County reserves the right to issue amendments or addendums to this ITN if the County considers that changes are necessary or additional information is needed.

Changes to a Proposal or withdrawal of a Proposal will only be allowed if a request is received prior to the Deadline for Proposals. No changes or withdrawals will be accepted after the Deadline for Proposals.

**F. Best Value Evaluation**

As established in this ITN, the County realizes that criteria other than price are important and will award contract(s) based on the Proposal that best meets the needs of the County.

**G. Right of Rejection**

Offers must comply with all of the terms of the ITN, and all applicable local, state, and federal laws, codes, and regulations. The County may reject as non-responsive any Proposal that does not comply with all of the material and substantial terms, conditions, and performance requirements of the ITN. Further, the County may reject a Proposal from any entity that is a parent, affiliate, or subsidiary, or that is under common ownership, control, or management with any other entity submitting a Proposal in response to this ITN.

A Proposer may not qualify the Proposal nor restrict the rights of the County. If Proposer does so, the Proposal may be determined to be a non-responsive counter-offer and the Proposal may be rejected.

No Proposal shall be rejected, however, if it contains a minor irregularity, defect or variation. If the irregularity, defect or variation is considered by the County to be immaterial or inconsequential, the County may choose to accept the Proposal.

Minor irregularities may be waived by the Purchasing Agent when they are any of the following:

1. Do not affect responsiveness;
2. Are merely a matter of form or format;
3. Do not change the relative standing or otherwise prejudice other offers;
4. Do not change the meaning or scope of the ITN;
5. Are trivial, negligible, or immaterial in nature;
6. Do not reflect a material change in the work; or
7. Do not constitute a substantial reservation against a requirement or provision.

In such cases the Proposer will be notified of the deficiency in the Proposal and given an opportunity to correct the irregularity, defect or variation or the County may elect to waive the deficiency and accept the Proposal. The decision to provide a waiver shall in no way modify or compromise the overall purpose of the submittal, nor excuse the Proposer from compliance with all requirements if awarded a Contract.

This ITN does not commit the County to award a contract. The County reserves the right to reject any or all Proposals if it is in the best interest of the County to do so. The County also reserves the right to terminate this ITN process at any time.

**H. Local Preference**

The County has adopted a preference for vendors whose principal place of business is located within the boundaries of the County. A five percent (5%) preference may be applied prior to approval of any purchase or acquisition of services, equipment, goods or supplies.

For purposes of the application of the local preference policy (County Policy 11-10), "principal place of business" is defined as the vendor's main office (or headquarters) or a major regional office. A "major regional office" is defined as a business location apart from the vendor's main office (or headquarters) which:

1. Has been issued a business license, if required, and has been established and open for a minimum of six months prior to the date that the approval authority authorizes the circulation of an RFP/ITN/ITB/Quote for any Contract, and
2. Can demonstrate on-going business activity in the field of endeavor on which the vendor is proposing, from that office during the preceding six months; and
3. Has a minimum of twenty-five percent (25%) of the Proposer's full time management employees and twenty-five percent (25%) of its full time regular employees working from the County location(s).

The County's Local Preference Policy means for example, if two Proposers are responding to this ITN and if quality, service and ability to meet the County's needs are equal, County staff must determine if one of the Proposers is a local vendor. If one of the Proposers is a local vendor, and its quoted price or cost for services, equipment, goods or supplies does not exceed five percent (5%) of the other Proposer's quoted price or cost, unless it is determined that an exemption applies, staff should recommend the Local vendor for the contract award.

**I. Clarification of Offers**

In order to determine if a Proposal is reasonably viable for award, communications by the Facilitator for the evaluation panel are permitted with a Proposer to clarify uncertainties or eliminate confusion concerning the contents of a Proposal. Clarifications may not result in a material or substantive change to the Proposal. The evaluation by the panel may be adjusted as a result of a clarification under this section.

**J. Public Records Act**

All Proposals and other material submitted become the property of the County and are subject to release according to the California Public Records Act (Government Code §6250). All Proposal information, including cost information, will be held in confidence during the evaluation and negotiation process. Thereafter, Proposals are subject to becoming a non-exempt public record.

If a Proposer believes that any portion of its Proposal is exempt from public disclosure, it must indicate the specific portions believed to be confidential and not subject to disclosure on Attachment I - Public Records Act Exemptions. The Proposer also must include a brief description that sets out the reasons for exemption from disclosure. Each stated exemption must include a citation to supporting legal authority, including statutory authority or case law, to support exemption from the Public Records Act. Requested exemptions that do not meet the requirements of this section will not be considered.

The County will use reasonable means to ensure that such information is safeguarded, but will not be held liable for inadvertent disclosure of the information. Proposals marked "Confidential" in their entirety will not be honored, and the County might not deny public disclosure of any portion of Proposals so marked.

By submitting a Proposal with portions identified in Attachment I as "Confidential," Proposer represents that it has a good faith belief that such portions are exempt from disclosure under the Public Records Act. Proposer may be requested to obtain legal protection from disclosure should a Public Records Act request be received. In the event the County does not disclose the information marked "Confidential," Proposer agrees to reimburse the County for, and to indemnify, defend (with counsel approved by County) and hold harmless the County, its officers, employees, agents, and volunteers from and against any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs and expenses, including without limitation, attorneys' fees, expenses and court costs of any nature arising from or relating to the County's non-disclosure of any such designated portions of a Proposal.

**K. Employment of Former County Officials**

Information must be provided in Attachment G regarding former County Administrative Officials (as defined below) who are employed by or represent Proposer. The information provided must include a list of former County Administrative Officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of Proposer and should also include the employment and/or representative capacity and the dates these individuals began employment with or representation of Proposer. For purposes of this section, "County Administrative Official" is defined as a member of the Board of Supervisors or such member's staff, Chief Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

Failure to provide this information may result in the Proposal being deemed non-responsive.

**L. Iran Contracting Act of 2010**

In accordance with Public Contract Code section 2204(a), the Proposer certifies that at the time the Proposal is submitted, the Proposer signing the Proposal is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 (<http://www.dgs.ca.gov/pd/Resources/PDLegislation.aspx>) as a person (as defined in Public Contract Code section 2202(e)) engaging in



investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Proposers are cautioned that making a false certification may subject the Proposer to civil penalties, termination of an existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205. Proposer agrees that signing the Proposal shall constitute signature of this Certification.

**M. Disclosure of Criminal and Civil Proceedings**

The County reserves the right to request the information described herein from the Proposer selected for Contract award. Failure to provide the information may result in a disqualification from the selection process and no award of Contract to the Proposer. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The selected Proposer may also be requested to provide information to clarify initial responses. Negative information provided or discovered may result in disqualification from the selection process and no award of Contract.

The selected Proposer may be asked to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Proposer will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the selected Proposer may also be asked to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Proposer will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

**N. Debarment and Suspension**

Proposer certifies in Attachment D that neither it nor its principals or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See Attachment D and the following United States General Services Administration's System for Award Management website <https://www.sam.gov>).

**O. California Secretary of State Business Entity Registration**

Proposer also certifies that if it or any of the subcontractors listed in the Proposal are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

**P. Unsatisfactory Performance**

Proposer affirms that it has no record of unsatisfactory performance with the County in the 24-month period immediately preceding the date of issuance of this ITN.

**Q. Final Authority**

The final authority to award a contract(s) as a result of this ITN rests solely with the County Board of Supervisors, or as delegated by the Board of Supervisors.

**V. SCOPE OF WORK – See Attachment M**

## VI. PROPOSAL SUBMISSION

### A. General

1. All interested and qualified Proposers are invited to submit a Proposal for consideration. Submission of a Proposal indicates that the Proposer has read and understands the entire ITN, including all appendixes, attachments, exhibits, schedules, and addenda (as applicable) and that all concerns regarding the ITN have been resolved.
2. Proposals must be received by the designated date and time. All proposers must register with the ePro system prior to the date and time to receive the proposal. Late or incomplete proposals will not be accepted. System-related issues in ePro shall be directed to the Purchasing Department at (909) 387-2060. For procurement-specific questions, please contact the person identified in Section I, Paragraph B – ITN Contact.
3. The Proposer acknowledges that its electronic signature is legally binding. Submittals in ePro will be opened from the system's encrypted lock box after the deadline and evaluated as stated in this ITN.
4. Paper responses may be submitted in lieu of electronic submission, by mail or in person to the ITN Contact and will be time/date stamped when received. Proposals can be withdrawn at any time prior to the scheduled Deadline for Proposals. The original and all copies must be in a sealed envelope or container stating on the outside: The Proposer Name, Address, Telephone Number, RFP number, RFP Title, and Proposal due date.
5. Hand carried Proposals may be delivered to the ITN Contact between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays observed by the County. Proposers are responsible for informing any delivery service, if used, of all delivery requirements, and for ensuring that the address information appears on the outer wrapper or envelope used by such service.
6. Proposals must be submitted in the format described below. Proposals are to be prepared in such a way as to provide a straightforward, concise description of capabilities to satisfy the requirements of this ITN.
7. Proposals must be completed in all respects as required in this section. A Proposal may not be considered if it is conditional or incomplete.

### B. Proposal Format

Responses to this ITN must be in the form of a Proposal package, which must be submitted in the following format:

1. **Presentation**  
Submit all hard copies of the Proposal on 8 ½ x 11 paper. Each page, including attachments, must be clearly and consecutively numbered.
2. **Cover Page**  
Use Attachment A as the cover page. This form must be fully completed and signed by an authorized officer of the Proposer.
3. **Table of Contents**  
All pages of the Proposal, including the enclosures, must be clearly and consecutively numbered and correspond to the Table of Contents.
4. **Statement of Certification**  
Include the following on Attachment B:
  - a. A statement that the offer made in the Proposal is firm and binding for 18 months from the Best and Final Offer deadline for Proposals.
  - b. A statement that all aspects of the Proposal, including cost, have been determined independently, without consultation with any other Proposer (competitor) for the purpose of restricting competition.
  - c. A statement that all declarations in the Proposal and attachments are true and that this shall constitute a warranty, the falsity of which will entitle the County to pursue any remedy by law.

- d. A statement that the Proposer agrees that all aspects of the ITN and the Proposal submitted shall be binding if the Proposal is selected and a Contract awarded.
  - e. A statement that the Proposer agrees to provide the County with any other information the County determines is necessary for an accurate determination of the Proposer's ability to perform the Services as proposed.
  - f. A statement that the Proposer, if selected will comply with all applicable rules, laws and regulations.
  - g. A statement that the Proposer has reviewed the ITN and contract terms in their entirety and have no exceptions to any requirements, terms or conditions, except as noted in Attachment H.
5. **Statement of Experience and Qualifications**  
Include the following in this section of the Proposal:
- a. Business name of the Proposer and type of legal entity such as corporation, partnership, etc. If Proposer is a business entity that must be registered with the California Secretary of State, Proposer shall provide the County the entity number assigned to it by the Secretary of State.
  - b. Number of years the Proposer has been in business under the present business name, as well as related prior business names.
  - c. Statement that the Proposer does not have any commitments or potential commitments that may impact the Proposer's ability to perform the Contract, if awarded.
6. **Licenses, Permits, and/or Certifications**  
Provide copies of all licenses, permits and/or certifications in Attachment C as required under Section XI. TERMS AND CONDITIONS Paragraph A, 22.
7. **Project Team Organization Chart**  
Provide an organization chart illustrating the project team, and clearly show the organization of the team and the hierarchy of the members. It must include:
- a. Organizational framework for the proposed project team.
  - b. Company name and staff name for each role identified in the chart.
  - c. Resumes of key personnel, including qualifications, education and project experience
8. **Proposal Description**  
The Proposal should include the following:
- a. A brief synopsis of the Proposer's understanding of the County's needs and how the Proposer plans to meet them.
  - b. A detailed statement of the proposed Services.
  - d. An explanation of any assumptions or constraints.
9. **Work Plan and Schedule**  
Include the following:
- a. Summary of management/work plan for this project.
  - e. Project schedule, including milestone dates for the planning phase, implementation, training, testing and closeout.
10. **Certification Regarding Debarment and Suspension**  
Complete Attachment D.
11. **Cost**  
Complete proposed pricing on Attachment E.
12. **References**  
Provide three references from other public agencies of similar size as the County, with whom you have established a contract on a project of this nature. Provide Contact Name, Address, Phone Number, and dates Services were provided on Attachment F.
13. **Former County Officials**  
Complete Attachment G
14. **Exceptions to ITN**  
Complete Attachment H.

**15. Public Records Act Exemptions**

Complete Attachment I – Public Records Act Exemptions if applicable.

**16. Indemnification and Insurance Requirements Affidavit**

Submit evidence of ability to insure as stated in Section XI, Paragraph B – Indemnification and Insurance Requirements. Proposer must complete and submit Attachment J – Indemnification and Insurance Requirements Affidavit, and ensure the form is complete, including the signature from Proposer's insurance broker/agent.

**17. Conflict of Interest**

Complete Attachment L – Conflict of Interest and Political Reform Act Obligations.

**VII. EVALUATION**

Proposals will be subject to an Initial Review to confirm responsiveness, by determining whether each Proposal includes the stipulated content, required certifications or licensing, etc., and is presented in the required format, in order for the Proposal to advance for evaluation. Any reasonable person reviewing for responsiveness must be able to ascertain that the Proposal meets these requirements.

The Preliminary Evaluation process includes the following categories except Oral Presentations and/or Demonstrations. The evaluation of Best and Final Offers includes all categories.

**A. QUALIFICATIONS, EXPERIENCE, AND REFERENCES WEIGHT: 15%**

**B. TECHNICAL REVIEW WEIGHT: 35%**

**C. COST WEIGHT: 10%**

**D. ORAL PRESENTATION AND DEMONSTRATION WEIGHT: 40%**

At its sole discretion, the County may utilize outside experts to assist in the evaluation process.

The County will establish an evaluation panel with responsibility for reviewing all Proposals and conducting the evaluations. Evaluation panel members will independently review and score the Proposals. A Facilitator will manage the integrity of the evaluation process and will not be a voting member of the evaluation panel.

**VIII. NEGOTIATIONS AND NOTICE OF INTENT TO AWARD**

**A. Competitive Process and Negotiations**

Following the Preliminary Evaluation the Scope of Work may be revised and provided to Proposers, at the sole discretion of the County, and Oral presentations and Demonstrations will be held.

Concurrent negotiations will then be conducted with all Proposers. This may include cost, technical, or other clarifications. If the contract negotiations take place in San Bernardino County, California, the Proposer will be responsible for its travel and per diem expenses of its personnel.

Any Proposer may submit questions regarding the County's process through the negotiation period. After that time, Proposers have no right to appeal regarding the process.

Following negotiations, the Scope of Work may be revised and provided to proposers, in order to prepare and submit a Best and Final Offer.

Any expert advisors to the evaluation panel will be included in a group discussion during the Final Evaluation to discuss the basis for individual scores, but not for the evaluators to agree upon scoring. Evaluators will independently review and score each Best and Final Offer (Proposal). Each evaluator will have the option to revise his/her Preliminary Evaluation scores, and will incorporate additional points from the Oral Presentations and Demonstrations. In the event a point score is revised, the evaluator will strike out the original score, document the new score, and provide comments to support the revision.

If clarifying information is needed at any point, the Facilitator will contact Proposer(s) to obtain the necessary information.

**B. Notice of Intent to Award (NOIA) – Proposer Notification of Selection**

After the completion of scoring a written or electronic Notice of Intent to Award (NOIA) and denial letters (or a copy of the NOIA) will be issued to all Proposers. The issuance date of the NOIA is the date the NOIA was delivered by email or into the care of the United States Postal Service for delivery to the Proposer.

**C. Contract Development**

After selection, Contract development will take place. If the selected Proposer fails to provide the information required to complete the Contract in a timely manner, fails to act in good faith, indicates it cannot perform the Contract within the budgeted funds available for the services, or if the Proposer and the County, after a good faith effort, simply cannot come to terms;

Then the County may terminate contract development with the Proposer initially selected and commence contract development with the next highest ranked Proposer.

**D. Award**

A Contract will be awarded based on a competitive selection of Proposals received. The contents of the Proposal of the successful Proposer will become contractual obligations and failure to accept these obligations in a Contract may result in cancellation of the award.

**IX. APPEAL PROCESS**

In the event a dispute arises concerning the process prior to the award of the Contract, the Proposer raising the dispute shall submit a request for resolution in writing to the Purchasing Agent. Proposer may appeal the recommended award or denial of award (Protest), provided the Protest is submitted in writing within 10 calendar days of the issuance date of the NOIA.

A Protest can only be brought on the following grounds:

1. Failure of the County to follow the weighted evaluation and weights specified in the ITN.
2. Violation of conflict of interest as provided by California Government Code Section 87100 et seq.
3. Violation of State or Federal law.

Protests will not be accepted for any other reasons than those stated above. All Protests must be sent to:

Laurie Rozko, Director  
San Bernardino County Purchasing Department  
777 E. Rialto Avenue  
San Bernardino, CA 92415-0760

Upon receipt of the formal Protest, the Purchasing Agent, or his/her designee, will attempt to resolve the Protest. A Protest shall be disallowed when, in the judgment of the Purchasing Agent it has been submitted: (1) as a delay tactic; (2) for the purpose of posturing the Proposer advantageously for future procurement; (3) in a form that deviates from the one prescribed; (4) without adequate factual basis or merit; or (5) in an untimely manner.

The Purchasing Agent shall make a decision concerning the Protest, and notify the Proposer submitting the Protest, within a reasonable timeframe prior to the tentatively scheduled date for awarding the Contract. The decision of the Purchasing Agent shall be deemed final.

Alternatively, at the Purchasing Agent's discretion, an Appeal Panel consisting of five (5) members appointed by the Purchasing Agent shall hear the Protest. The Proposer will be provided reasonable notice of the time, date and location of the hearing. In the event that a protesting Proposer does not appear at the Protest hearing as scheduled, the Protest will be disallowed.

The hearing is informal, in that it is not subject to the strict rules of evidence or procedure, and live witnesses, if any, will not be sworn. All relevant evidence is admissible, including hearsay. It will be up to the Appeal Panel members to consider the credibility of the evidence and the weight to give it.

The Panel will determine by at least three (3) affirmative votes: 1) whether the Protest was submitted timely; 2) whether the Protest is based on at least one of the three designated grounds identified above; and 3) whether the grounds on which the Protest are based have been substantiated.

If any of the grounds are determined to be valid, the Panel will also decide if the valid portion of the Protest has so tainted the ITN process that it is unfair to the Proposer or whether the valid grounds for the Protest are in the nature of harmless error and that the ITN process was fair to the Proposer. The Panel will not re-evaluate the Proposals.

The Purchasing Agent shall notify the Proposer making the Protest of the decision, within a reasonable timeframe prior to the tentatively scheduled date for awarding the Contract. The decision of the Appeal Panel shall be deemed final. If the Contract must be approved by the Board, after receiving a decision from the Purchasing Agent or Appeal Panel, the Proposer may then present its Protest to the Clerk of the Board of Supervisors for the Board's review and decision. The Proposer must file its written Protest with the Clerk of the Board or provide a verbal Protest (typically limited to three minutes) prior to the Board making a decision on the Contract. Any decision of the Board shall be deemed final.

A Proposer protesting the results of any of the processes described herein must follow the procedures set forth. By submitting a "Letter of Intent to Protest", the Proposer has agreed that the protest procedures herein shall precede any action in a judicial or quasi-judicial tribunal regarding this Proposal. Protests that do not follow these procedures shall not be considered. The protest procedures constitute the sole administrative remedy available to the Proposer under this ITN. Upon exhaustion of this remedy no additional recourse is available.

## **X. TERMS AND CONDITIONS**

The selected Proposer will be required to enter into a formal Contract with the County. This ITN sets forth some of the general provisions which will be included in the final Contract. In submitting a response to this ITN, Proposer will be deemed to have agreed to each clause unless the Proposal identifies an objection and County agrees to a change of language in writing. All objections to any Terms and Conditions must be listed on Attachment H – Exceptions to ITN, or any exception thereto shall be waived.

### **A. General**

#### **1. Contract Amendments**

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

#### **2. Contract Exclusivity**

This is not an exclusive Contract. The County reserves the right to enter into a Contract with other Contractors for the same or similar Services. The County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

#### **3. Attorney Fees and Costs**

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under the Indemnification and Insurance Requirements.

#### **4. Background Checks for Contractor Personnel**

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide services to the County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing Services. If requested by the County, Contractor shall provide the results of the background check of each individual to the County. Such background check shall be in the form generally used by Contractor

in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the County's hiring criteria, at County's sole discretion, shall not be assigned to work on County property or Services, and County shall have the right to refuse access to any Contract personnel to any County facility.

5. **Change of Address**

Contractor shall notify the County in writing of any change in mailing address within ten (10) business days of the change.

6. **Choice of Law**

This Contract shall be governed by and construed according to the laws of the State of California.

7. **Compliance with County Policy**

In performing the Services and while at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all additions and modifications to each of subsections (b),(c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor personnel or may be made available to Contractor or Contractor personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate.

County shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

8. **Confidentiality**

Contractor shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving Services pursuant to this Contract, except for statistical information not identifying any participant. Contractor shall not use or disclose any identifying information for any other purpose other than carrying out the Contractor's obligations under this Contract, except as may be otherwise required by law. This provision will remain in force even after the termination of the Contract.

9. **Primary Point of Contact**

The Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

10. **County Representative**

The Registrar of Voters or his/her designee shall represent the County in all matters pertaining to the Services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

11. **Damage to County Property**

Contractor shall repair, or cause to be repaired, at its own cost, all damage to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or employees or agents of the Contractor. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, the County may make any necessary repairs. For such repairs, the Contractor, shall repay all costs incurred by the County, by cash payment upon demand or

County may deduct such costs from any amounts due to the Contractor from the County, as determined at County's sole discretion.

**12. Debarment and Suspension**

The Contractor certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

**13. Drug and Alcohol-Free Workplace**

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

- a. Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- b. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- c. Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

**14. Duration of Terms**

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

**15. Employment Discrimination**

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

**16. Environmental Requirements**

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the County in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County's environmentally preferable purchases. Contractors must also be able to report on environmentally preferable goods used in the provision of Services to the County, utilizing a County approved form.



**17. Improper Influence**

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of this contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of this Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

**18. Improper Consideration**

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate any Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the Proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a Contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

**19. Informal Dispute Resolution**

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

**20. Legality and Severability**

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

**21. Licenses, Permits, and/or Certifications**

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits, and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits, and/or certifications. Failure to maintain required licenses, permits, and certifications may result in immediate termination of this Contract.

**22. Material Misstatement/Misrepresentation**

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

**23. Mutual Covenants**

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

**24. Nondisclosure**

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or

otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

**25. Notice of Delays**

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

**26. Ownership of Documents**

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of the County upon payment for services (and product, if applicable). All such items shall be delivered to County at the completion of work under the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

**27. Participation Clause**

The County desires that Counties within the State of California requiring the same services provided herein may at their option and through the County Purchasing agent, avail themselves of this Contract. Upon notice, in writing, the Contractor agrees to the extension of the terms of a resultant contract with such governmental bodies as though they have been expressly identified in this bid, with the provisions that such governmental body shall make purchases directly through and to the Contractor. The County will not be liable for any such purchase made between the Contractor and another governmental body who avails themselves of this contract.

**28. Air, Water Pollution Control, Safety and Health**

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

**29. Relationship of the Parties**

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto. In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County of San Bernardino. Any provision of this Contract that may appear to give the County any right to direct the Contractor concerning the details of performing the services/Scope of Work, or to exercise any control over such performance, shall mean only that the Contractor shall follow the direction of the County concerning the end results of the performance.

**30. Release of Information**

No news releases, advertisements, public announcements or photographs arising out of this the Contract or Contractor's relationship with County may be made or used without prior written approval of the County.

**31. Strict Performance**

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

**32. Subcontracting**

Contractor agrees not to enter into any subcontracting Contracts for work contemplated under the Contract without first obtaining written approval from the County. Any subcontractor shall be subject

to the same terms and conditions as Contractor. Contractor shall be fully responsible for the performance and payments of any subcontractor's contract.

Contractor shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the Services to County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Paragraph B of this Section XI. All approved subcontractors shall be subject to the provision of this contract applicable to Contractor Personnel, including removal pursuant to subsection A.5 of this Section XI.

For any subcontractor, Contractor shall:

- 34.1 Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- 34.2 Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
- 34.3 Include in the subcontractor's subcontract substantially similar terms as are provided in Articles B, Contractor Responsibilities and C, General Contract Requirements.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County.

**33. Subpoena**

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

**34. Termination for Convenience**

The County reserves the right to terminate the Contract, for any reason, with a ninety (90) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

**35. Time of the Essence**

Time is of the essence in performance of this Contract and of each of its provisions.

**36. Venue**

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

**37. Successors and Assigns**

This Contract shall be binding upon County and Contractor and their respective successors and assigns.

Neither the performance of this Contract, nor any part thereof, nor any monies due or to become due thereunder may be assigned by Contractor without the prior written consent and approval of County.

**Death or Incapacity:** If the Contractor transacts business as an individual, his/her death or incapacity shall automatically terminate this Contract as of the date of such event, and neither he/she nor his/her estate shall have any further right to perform hereunder, and County shall pay him/her or his/her estate the compensation payable under Article F, Fiscal Provisions, for any services rendered prior to such termination not heretofore paid, reduced by the amount of additional costs which will be incurred by County by reason of such termination. If there be more than one Contractor and any one of them die or become incapacitated and the others continue to render the services covered herein, County will make payment to those continuing as though there had been no such death or incapacity and County will not be obliged to take any account of the person who died or became incapacitated or to make any payments to such person or his estate. The provision shall apply in the event of progressive or simultaneous occasions of death or incapacity among any group of persons named as Contractor herein, and if death or incapacity befalls the last one of such group before this Contract is fully performed, then the rights shall be as if there had been only one Contractor.

**38. Copyright**

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the County as the funding agency and Contractor as the creator of the publication. No such materials or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printed material, and periodicals, assembled pursuant to this Contract must be filed with the County prior to publication.

**39. Fiscal Provisions**

- a. The maximum amount of reimbursement/payment under this Contract shall be subject to availability of funds to the County. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's Services and expenses incurred in the performance hereof, including travel and per diem.
- b. Contractor shall provide County itemized monthly invoices, in arrears, and in a format acceptable to the County for Services performed under this Contract within 20 days of the end of the previous month. The County shall make payment to Contractor within 60 working days after receipt of invoice or the resolution of any billing dispute.
- c. Contractor shall accept all payments from County via electronic fund transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.
- d. County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the Services rendered or equipment and/or parts supplied to the County pursuant to the Contract.
- e. Costs for Services under the terms of this Contract shall be incurred during the Contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.

**40. Conflict of Interest**

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent officers, employees, subcontractors, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers,

employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

Contractor acknowledges and agrees that it will not submit a bid, or enter into an agreement with a third party, for the project. Contractor agrees not to affiliate with, or receive financial consideration from, any third party in connection with this project, except as specifically authorized under this Contract.

Contractor understands per the attached Conflict of Interest and Political Reform Act Obligations (Attachment L) that the Registrar of Voters has determined Contractor meets Disclosure Determination number 1 and that disclosure is not required.

## **B. Indemnification and Insurance Requirements**

### **1. Indemnification**

Contractor shall defend and indemnify County for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor. This Agreement incorporates by reference the provisions of Civil Code section 2782.8, including, but not limited to, the provisions that concern the duty and cost to defend the County.

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 attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any Goods or Services. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against County, or County receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, County will use reasonable efforts to notify Contractor promptly of such lawsuit, claim or election. However, County's failure to provide or delay in providing such notice will relieve Contractor of its obligations only if and to the extent that such delay or failure materially prejudices Contractor's ability to defend such lawsuit or claim. County will give Contractor sole control of the defense (with counsel reasonably acceptable to County) and settlement of such claim; provided that Contractor may not settle the claim or suit absent the written consent of County unless such settlement (a) includes a release of all claims pending against County, (b) contains no admission of liability or wrongdoing by County, and (c) imposes no obligations upon County other than an obligation to stop using the Goods or Services that are the subject of the claim. In the event that Contractor fails to or elects not to defend County against any claim for which County is entitled to indemnity by Contractor, then Contractor shall reimburse County for all reasonable attorneys' fees and expenses within 30 days from date of invoice or debit memo from County. After 30 days, County will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by County to Contractor. This shall not apply to any judgment or settlement amount, which amounts County shall be entitled to notify, invoice or debit Contractor's account at any time; and County, at its sole discretion, may settle the claim or suit.

If, in Contractor's opinion, any goods or Services become, or are likely to become, the subject of a claim of infringement of Intellectual Property Rights, Contractor may, at its option: (i) procure for County the right to continue using the goods or receiving the Services; (ii) replace or modify the goods or Services to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is feasible, in the reasonable judgment of Contractor, County shall cease use of the goods or Services upon written notice from Contractor, and Contractor shall provide County with a pro-rata refund of the unearned fees paid by County to Contractor for such goods or Services.

**2. Additional Insured**

All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of Services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

**3. Waiver of Subrogation Rights**

The Contractor shall require the carriers of the required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, Contractors, and Subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

**4. Policies Primary and Non-Contributory**

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

**5. Severability of Interests**

Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and County or between the County and any other insured or additional insured under the policy.

**6. Proof of Coverage**

Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of Services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of Services hereunder until the completion of such Services. Within fifteen (15) days of the commencement of this Contract, Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

**7. Acceptability of Insurance Carrier**

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".

**8. Deductibles and Self-Insured Retention**

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

**9. Failure to Procure Coverage**

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the Contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor(s)/Applicant(s) will be reduced to pay for County purchased insurance.

**10. Insurance Review**

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interest of the County. In addition, if Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk

Management or designee is authorized, but not required, to change these insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

**11. Insurance Specifications**

Contractor agrees to provide insurance set forth in accordance with the requirements herein. If Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

**12. Workers' Compensation/Employers Liability**

A program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with two hundred and fifty thousand dollar (\$250,000) limits, covering all persons, including volunteers, providing services on behalf of the Contractor and all risks to such persons under this Contract.

If Contractor has no employees, it may certify or warrant to County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

**13. Commercial/General Liability**

Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations)
- d. Explosion, collapse and underground hazards.
- e. Personal Injury
- f. Contractual liability
- g. \$2,000,000 general aggregate limit

**14. Automobile Liability**

Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If Contractor is transporting one or more non-employee passengers in performance of Services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

**15. Umbrella Liability**

An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

**16. Professional Services**

Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the Contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after Contract completion.

**17. Cyber Liability**

Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

**C. Right to Monitor and Audit**

**1. Right to Monitor**

The County, State and Federal governments shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have the absolute right to monitor the performance of Contractor in the delivery of Services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring and evaluation of this Contract and comply with any and all reporting requirements established by the County. Contractor shall repay to County within thirty (30) days of receipt of audit findings any reimbursements made by County to Contractor that are determined by subsequent audit to be unallowable pursuant to the terms of this Contract or by law.

**2. Records**

Contractor shall maintain all records and books pertaining to the delivery of Services under this Contract and demonstrate accountability for Contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of Contract.

All records relating to the Contractor's personnel, Contractors, Subcontractors, Service/Scope of Work and expenses pertaining to this Contract shall be kept in generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars which state the administrative requirements, cost principles and other standards for accountancy.

All records pertaining to Services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under the Agreement or until all pending County, State and Federal audits are completed, whichever is later.

**D. Correction of Performance Deficiencies**

1. In the event of a problem or potential problem that could impact the quality or quantity of work, Services, or the level of performance under this Contract, Contractor shall notify the County within one (1) working day, in writing and by telephone.



2. Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.
3. Contractor's Primary Contact and County Representative shall attempt in good faith to promptly resolve any dispute, controversy or claim arising out of this Contract. If these representatives are unable to resolve a dispute, controversy or claim with ten (10) days after the initial request for a meeting, then the dispute shall be submitted to an executive-level performance review.

If the Primary Contact and County Representative are not successful in resolving the dispute, negotiations shall be conducted by the Chief Executive Officer, or designee, and the highest level executive for Contractor. If these representatives are unable to resolve the dispute within ten (10) days after the representatives have commenced negotiations, or 20 days have passed since the initial request for negotiations at this level, the Parties may agree in writing to submit the dispute to mediation.

4. In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract.
  - a. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County;
  - b. Withhold funds pending duration of the breach;
  - c. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery;
  - d. Offset against any monies billed by Contractor but yet unpaid by the County;
  - e. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.
5. Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provision of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either Party shall not constitute a waiver of the right to pursue other available remedies.

**ATTACHMENT A – COVER PAGE**

**Use this checklist to ensure that all items requested have been included.**

Items Completed		Page (s)
1.	Attachment A – Cover Page	
2.	Attachment B – Statement of Certification	
3.	Attachment C – Licenses, Permits, and/or Certifications	
4.	Attachment D –Debarment and Suspension	
5.	Attachment E – Costs Proposal Sheet	
6.	Attachment F – References	
7.	Attachment G – Employment of Former County Officials	
8.	Attachment H – Exceptions to ITN	
9.	Attachment I – Public Records Act Exemptions	
10.	Attachment J – Indemnification and Insurance Requirements Affidavit	
11.	Attachment K – Business Associate Addendum for Cloud Services	
12.	Attachment L – Conflict of Interest and Political Reform Act Obligations	
13.	Attachment M – Scope of Work	

Proposer Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: ( ) \_\_\_\_\_ FAX No.: ( ) \_\_\_\_\_

Email Address: \_\_\_\_\_

Federal Tax ID: \_\_\_\_\_

ITN Contact: \_\_\_\_\_

Name of Authorized Representative: \_\_\_\_\_

Title of Authorized Representative: \_\_\_\_\_

**By signing below, the individual acknowledges that he/she has the authority to bind the Proposer to the terms of the Proposal. The individual further acknowledges that he/she has read and understands the ITN, the contents of the Proposal and the Attachments, and attests to the accuracy of the information submitted therein.**

Signature of Authorized Representative: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT B – STATEMENT OF CERTIFICATION**

The following statements are incorporated in our response to San Bernardino County.

	<b>Statement</b>	<b>Agree (initial)</b>	<b>Agree with qualification (initial and attach explanation)</b>
1.	The offer made in the Proposal is firm and binding for 18 months from the date the Proposal is opened.		
2.	All aspects of the Proposal, including cost, have been determined independently, without consultation with any other Proposer or competitor for the purpose of restricting competition.		
3.	All declarations in the Proposal and attachments are true and that this shall constitute a warranty, the falsity of which will entitle the County to pursue any remedy by law.		
4.	Proposer agrees that all aspects of the ITN and the Proposal submitted shall be binding if the Proposal is selected and a Contract awarded.		
5.	Proposer agrees to provide the County with any other information the County determines is necessary for an accurate determination of the Proposer's ability to perform the services as proposed.		
6.	Proposer, if selected will comply with all applicable rules, laws and regulations.		
7.	The ITN has been reviewed in its entirety and Proposer has no exceptions to any requirements, terms, or conditions, except as noted in Attachment H.		



### ATTACHMENT D – DEBARMENT AND SUSPENSION

In compliance with contracts and grants Contracts applicable under the U.S. Federal Awards Program, the following California Secretary of State Business Entity Registration is required by all Proposers submitting a response to this ITN:

1. The Proposer certifies, to the best of its knowledge and belief, that neither the Proposer nor its Principals are suspended, debarred, proposed for debarment, or declared ineligible for the award of contracts from the United States federal government procurement or non-procurement programs, or are individually or collectively listed as such in the United States General Services Administration's System for Award Management (SAM) website ([www.sam.gov](http://www.sam.gov)).
2. The Proposer certifies, to the best of its knowledge and belief, that neither any subcontractor listed in its Proposal, nor subcontractor's Principals are suspended, debarred, proposed for debarment, or declared ineligible for the award of contracts from the United States federal government procurement or nonprocurement programs, or are individually or collectively listed as such in the United States General Services Administration's System for Award Management (SAM) website ([www.sam.gov](http://www.sam.gov)).
3. "Principals," for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).
4. The Proposer shall provide immediate written notice to the Purchasing Agent if, at any time prior to award, the Proposer learns that this certification was erroneous when submitted or has become erroneous by reason of changes in circumstances.
5. This certification is a material representation of fact upon which reliance will be placed when making the award. If it is later determined that the Proposer rendered an erroneous certification, in addition to other remedies available to the County, the County may terminate the Contract resulting from this ITN for default.
6. Proposer affirms that neither it, nor any subcontractor listed in the Proposal, has any record of recent unsatisfactory performance with the County during the past 24 months at a minimum.
7. Proposer also certifies that if it or any of the subcontractors listed in the Proposal are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

### **ATTACHMENT E – COST PROPOSAL SHEET**

Please complete the excel format of Attachment E with total costs the purchase based on the information provided in the Scope of Work:

One-time purchase costs for Hardware and Software including any costs associated with the implementation, training and support services.

Annual ongoing costs for hardware, software such as licensing, maintenance, extended warranty and election support.

**Electronic Poll Book - Price List**

ATTACHMENT E

Hardware Costs: List the description, make, model and unit cost for each piece of hardware.

Software Costs: List the description, version and unit costs of each component. List any ongoing costs associated with software such as licensing.

Maintenance and Support Costs (ongoing costs): List the services to be provided.

Services: List the services to be provided and reason for the service (Installation, implementation, training, election support etc.)

<b>HARDWARE</b>				<b>Ongoing Costs - Licensing</b>			<b>Ongoing Costs - Maintenance &amp; Support</b>			<b>Ongoing Costs - Extended Warranty (optional)</b>	
Description (Make/Model, etc.)	# of Units	One-Time Costs		# of Units	Ongoing Costs	Ongoing Subtotal	# of Units	Ongoing Costs	Ongoing Subtotal	Initial Warranty Period	Cost of Warranty (optional Annual)
		Cost per Unit	One time Subtotal								
			\$ -			\$ -			\$ -		
			\$ -			\$ -			\$ -		
			\$ -			\$ -			\$ -		
			\$ -			\$ -			\$ -		
			\$ -			\$ -			\$ -		
			\$ -			\$ -			\$ -		
			\$ -			\$ -			\$ -		
		Sub-Total	\$ -		Sub-Total	\$ -		Sub-Total	\$ -		Sub-Total \$ -

<b>SOFTWARE</b>				<b>Ongoing Costs - Licensing</b>			<b>Ongoing Costs - Maintenance &amp; Support</b>			<b>Ongoing Costs - Extended Warranty (optional)</b>	
Description (Version, etc.)	# of Units	One-Time Costs		# of Units	Ongoing Costs	Ongoing Subtotal	# of Units	Ongoing Costs	Ongoing Subtotal	Initial Warranty Period	Cost of Warranty (optional Annual)
		Cost per Unit	One time Subtotal								
			\$ -			\$ -			\$ -		
			\$ -			\$ -			\$ -		
			\$ -			\$ -			\$ -		
			\$ -			\$ -			\$ -		
			\$ -			\$ -			\$ -		
			\$ -			\$ -			\$ -		
			\$ -			\$ -			\$ -		
		Sub-Total	\$ -		Sub-Total	\$ -		Sub-Total	\$ -		Sub-Total \$ -

**Electronic Poll Book - Price List**

ATTACHMENT E

SERVICES: Implemenation & Initial Training			One-Time Costs		Ongoing Costs - Support		
Description of Service	# of Units	Cost per Unit	One time Subtotal	# of Units	Ongoing Costs	Ongoing Subtotal	
			\$ -			\$ -	
			\$ -			\$ -	
			\$ -			\$ -	
			\$ -			\$ -	
			\$ -			\$ -	
			\$ -			\$ -	
			\$ -			\$ -	
			\$ -			\$ -	
Sub-Total			\$ -	Sub-Total \$ -			

SERVICES: Election Training & Support			One-Time Costs		Ongoing Costs - Support		
Description of Service	# of Units	Cost per Unit	One time Subtotal	# of Units	Ongoing Costs	Ongoing Subtotal	
			\$ -			\$ -	
			\$ -			\$ -	
			\$ -			\$ -	
			\$ -			\$ -	
			\$ -			\$ -	
			\$ -			\$ -	
			\$ -			\$ -	
			\$ -			\$ -	
Sub-Total			\$ -	Sub-Total \$ -			

Purchase Sub-total			\$ -	Annual Ongoing Costs Sub-Total		\$ -	Ongoing Maintenance & Support	\$ -	Extended Warranty (optional) Annual Sub-total	\$ -
--------------------	--	--	------	--------------------------------	--	------	-------------------------------	------	---	------



**ATTACHMENT F - REFERENCES**

<b>Name of Agency</b>	<b>Contact Name/Address</b>	<b>Phone Number</b>	<b>Dates services provided (from/through*)</b>

Provide a minimum of three customer references Proposer has contracted with, providing the same service as requested in this ITN.

\*Enter "Present" if still providing the services (Example: 10/08/13 - present).



**ATTACHMENT H – EXCEPTIONS TO ITN**

CONTRACTOR NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE# ( ) \_\_\_\_\_ FAX # ( ) \_\_\_\_\_

I have reviewed the ITN in its entirety and have the following exceptions: (Please identify and list your exceptions by indicating ITN, the Section or Paragraph number, and Page number, as applicable. Be specific about your objections to content, language, or omissions. Add as many pages as required.)

**ATTACHMENT I – PUBLIC RECORDS ACT EXEMPTIONS**

PROPOSER NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE# ( ) \_\_\_\_\_ FAX # ( ) \_\_\_\_\_

Proposer requests that specific portions of the contents of this Proposal be held confidential and not subject to public disclosure pursuant to the Public Records Act. The specific portions are detailed below: (Please identify and list your exemptions by indicating the Section or Paragraph number, and Page number, of the Proposal where the content is contained.) **Each stated exemption must include a citation to supporting legal authority, including statutory authority or case law, to support exemption from the Public Records Act. Requested exemptions that does not meet the requirements of this section will not be considered.**

**ATTACHMENT J - INDEMNIFICATION AND INSURANCE REQUIREMENTS AFFIDAVIT**

**THE PROPOSER'S INSURANCE COMPANY(S) OR INSURANCE AGENT MUST COMPLETE THIS FORM  
AND  
THE PROPOSER MUST SUBMIT THIS COMPLETED AFFIDAVIT WITH THE PROPOSAL.**

I, the undersigned (Please check one box)  underwriter  agent/broker, certify that I and the Proposer listed below have jointly reviewed the "Insurance Requirements" in this Invitation to Negotiate (ITN). If the County of San Bernardino ("County") awards the Proposer the Contract for this project, I will be able—within fourteen (14) calendar days after the Proposer is notified of the Contract's award—to furnish the County with all the required, insurance certificate(s) and endorsement(s) as specified in Section XI, Paragraph B. Indemnification and Insurance Requirements.

Insurance Broker / Agency Name \_\_\_\_\_ Date \_\_\_\_\_

Insurance Broker's / Agent's Name (Printed) \_\_\_\_\_ Insurance Broker's / Agent's Name (signature) \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone Number \_\_\_\_\_ FAX Number \_\_\_\_\_ Email Address \_\_\_\_\_

Proposer's Name \_\_\_\_\_ County ITN Name and Number \_\_\_\_\_

**Below State the Name of Insurance Company Providing Coverage:**

DO NOT write "Will Provide," "To Be Determined," "When required," or similar phrases.

Commercial General Liability \_\_\_\_\_

Automobile Liability \_\_\_\_\_

Workers' Compensation Liability \_\_\_\_\_

Professional Liability (Errors and Omissions) \_\_\_\_\_

Cyber Liability \_\_\_\_\_

[NOTE TO PROPOSER: See Section XI, Paragraph B. Indemnification and Insurance Requirements, for details on the basic requirements and types of insurance for this agreement.]

NOTE TO THE UNDERWRITER / AGENT-BROKER: If the insurance forms that the Proposer submits to the County do not fully comply with the Insurance Requirements, and/or if the Proposer fails to submit the forms within the 14-day time limit, the County may: (1) declare the Proposer's Proposal non-responsive, and (2) award the Contract to the next highest ranked Proposer.

If you have any questions about the Insurance Requirements, please contact Mr. Rafael Viteri, County of San Bernardino - Risk Management Department, at (909) 386-8730 or via e-mail [rviteri@rm.sbcounty.gov](mailto:rviteri@rm.sbcounty.gov) (Please provide name of ITN with your email question(s)).

## **ATTACHMENT K - BUSINESS ASSOCIATE ADDENDUM FOR CLOUD SERVICES SOFTWARE AS A SERVICE (SAAS)**

This Business Associate Addendum for Cloud Services is entered into by and between the County of San Bernardino (County) and Business Associate (Contractor) for the purposes of establishing terms and conditions applicable to the provision of services by Business Associate to the County involving the use of hosted cloud computing services. County and Business Associate agree that the following terms and conditions will apply to the services provided under this addendum and the associated Business Associate Agreement as applicable.

### **1. DEFINITIONS:**

- a) **"Software as a Service (SaaS)"** - The capability provided to the consumer is to use applications made available by the provider running on a cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a web browser or application. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
- b) **"Data"** - means any information, formulae, algorithms, or other content that the County, the County's employees, agents and end users upload, create or modify using the SaaS pursuant to this Contract. Data also includes user identification information, Protected Health Information (as defined by the Health Insurance Portability and Accountability Act (HIPAA)) and metadata which may contain Data or from which the Data may be ascertainable.
- c) **"Data Breach"** - means any access, destruction, loss, theft, use, modification or disclosure of Data by an unauthorized party or that is in violation of Contract terms and/or applicable state or federal law.

### **2. SaaS AVAILABILITY:** Unless otherwise stated in the Statement of Work (SOW),

- a) The SaaS shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon maintenance downtime).
- b) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the County shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the SOW.
- c) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the County may terminate the contract for material breach.
- d) Contractor shall provide advance written notice to the County in the manner set forth in the SOW of any major upgrades or changes that will affect the SaaS availability.

### **3. DATA AVAILABILITY:** Unless otherwise stated in the SOW,

- a) The Data shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon maintenance downtime).
- b) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the County shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the SOW if the County is unable to access the Data as a result of:
  - 1) Acts or omissions of Contractor;
  - 2) Acts or omissions of third parties working on behalf of Contractor;

- 3) Network compromise, network intrusion, hacks, introduction of viruses, disabling devices, malware and other forms of attack that can disrupt access to Contractor's server, to the extent such attack would have been prevented by Contractor taking reasonable industry standard precautions;
  - 4) Power outages or other telecommunications or Internet failures, to the extent such outages were within Contractor's direct or express control.
- c) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the County may terminate the contract for material breach.

#### 4. DATA SECURITY:

- a) In addition to the provisions set forth in the Business Associate Agreement, Contractor shall certify to the County:
  - 1) The sufficiency of its security standards, tools, technologies and procedures in providing SaaS under this Contract;
  - 2) Compliance with the following:
    - i. The California Information Practices Act (Civil Code Sections 1798 et seq.);
    - ii. Undergo an annual Statement on Standards for Attestation Engagements (SSAE) 16 Service Organization Control (SOC) 2 Type II audit. Audit results and Contractor's plan to correct any negative findings shall be made available to the County within thirty (30) business days of Contractor's receipt of such results.
- b) Contractor shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with section a) above at all times during the term of this Addendum to secure such Data from Data Breach, protect the Data and the SaaS from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the County's access to its Data.
- c) Contractor shall allow the County reasonable access to SaaS security logs, latency statistics, and other related SaaS security data that affect this Addendum and the County's Data, at no cost to the County.
- d) Contractor assumes responsibility for the security and confidentiality of the Data under its control.
- e) No Data shall be copied, modified, destroyed or deleted by Contractor other than for normal operation or maintenance of SaaS during the Addendum period without prior written notice to and written approval by the County.
- f) Contractor shall provide access to Data only to those employees, contractors and subcontractors who need to access the Data to fulfill Contractor's obligations under this Agreement. Contractor will ensure that, prior to being granted access to Data, staff who perform work under this agreement have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Addendum and the associated Business Associate Agreement; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the Data they will be handling.

**5. ENCRYPTION:** Contractor warrants that all Data will be encrypted in transmission (including via web interface) using Transport Layer Security (TLS) version 1.2 or equivalent and in storage at a level equivalent to or stronger than Advanced Encryption Standard (AES) 128-bit level encryption.

**6. DATA LOCATION:** All Data will be stored on servers located solely within the Continental United States.

**7. RIGHTS TO DATA:** The parties agree that as between them, all rights, including all intellectual property rights, in and to Data shall remain the exclusive property of the County, and Contractor has a limited, non-exclusive license to access and use the Data as provided to Contractor solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license or right to the Data, including user tracking and exception Data within the system, by implication, or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of Data by Contractor or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.

**8. TRANSITION PERIOD:**

- a) For 90 days prior to the expiration date of this Contract, or upon notice of termination of this Contract, Contractor shall assist the County in extracting and/or transitioning all Data in the format determined by the County ("Transition Period").
- b) The Transition Period may be modified in the SOW or as agreed upon in writing by the parties in a contract amendment.
- c) During the Transition Period, SaaS and Data access shall continue to be made available to the County without alteration.
- d) Contractor agrees to compensate the County for damages or losses the County incurs as a result of Contractor's failure to comply with this section.
- e) Unless otherwise stated in the SOW, the Contractor shall permanently destroy or render inaccessible any portion of the Data in Contractor's and/or subcontractor's possession or control following the expiration of all obligations in this section. Within 30 days, Contractor shall issue a written statement to the County confirming the destruction or inaccessibility of the County's Data.
- f) The County at its option, may purchase additional transition services as agreed upon in the SOW.

**9. DISASTER RECOVERY/BUSINESS CONTINUITY:** Unless otherwise stated in the Statement of Work,

- a) In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, Contractor shall notify the County by the fastest means available and also in writing. Contractor shall provide such notification within twenty-four (24) hours after Contractor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contractor shall inform the County of:
  - 1) The scale and quantity of the Data loss;
  - 2) What Contractor has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and
  - 3) What corrective action Contractor has taken or will take to prevent future Data loss.
- b) If Contractor fails to respond immediately and remedy the failure, the County may exercise its options for assessing damages or other remedies.
- c) Contractor shall restore continuity of SaaS, restore Data, restore accessibility of Data, and repair SaaS as needed to meet the Data and SaaS Availability requirements under this Addendum. Failure to do so may result in the County exercising its options for assessing damages or other remedies.



- d) Contractor shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with the County. The County and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the County, its agents and law enforcement.

**10. EXAMINATION AND AUDIT:** Unless otherwise stated in the Statement of Work:

- a) Upon advance written request, Contractor agrees that the County or its designated representative shall have access to Contractor's SaaS operational documentation and records, including online inspections that relate to the security of the product purchased by the County.
- b) Contractor shall allow the County, its authorized agents, or a mutually acceptable third party to test that controls are in place and working as intended. Tests may include, but not be limited to, the following:
  - 1) Operating system/network vulnerability scans,
  - 2) Web application vulnerability scans,
  - 3) Database application vulnerability scans, and
  - 4) Any other scans to be performed by the County or representatives on its behalf.
- c) After any significant Data loss or Data Breach or as a result of any disaster or catastrophic failure, Contractor will at its expense have an independent, industry-recognized, County-approved third party perform an information security audit. The audit results shall be shared with the County within seven (7) days of Contractor's receipt of such results. Upon Contractor receiving the results of the audit, Contractor will provide the County with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Contract.

**11. DISCOVERY:** Contractor shall promptly notify the County upon receipt of any requests which in any way might reasonably require access to the Data of the County or the County's use of the SaaS. Contractor shall notify the County by the fastest means available and also in writing, unless prohibited by law from providing such notification. Contractor shall provide such notification within forty-eight (48) hours after Contractor receives the request. Contractor shall not respond to subpoenas, service of process, Public Records Act requests, and other legal requests directed at Contractor regarding this Contract without first notifying the County unless prohibited by law from providing such notification. Contractor agrees to provide its intended responses to the County with adequate time for the County to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. Contractor shall not respond to legal requests directed at the County unless authorized in writing to do so by the County.

**13. INSURANCE REQUIREMENTS:** Contractor shall, at its own expense, secure and maintain for the term of this contract, Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall cover breach response cost as well as any regulatory fines and penalties.

**14. DATA SEPARATION:** Data must be partitioned from other data in such a manner that access to it will not be impacted or forfeited due to e-discovery, search and seizure or other actions by third parties obtaining or attempting to obtain Service Provider's records, information or data for reasons or activities that are not directly related to Customer's business.

## ATTACHMENT L – CONFLICT OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

During the term of this Contract, Contractor shall not act a Contractor or perform services of any kind for any person or entity whose interests conflict in any way with those of the County. Contractor shall at all times comply with the terms of the Political Reform Act and the local conflict of interest code. Contractor shall immediately disqualify itself and shall not use its official position to influence in any way, any matter coming before the County in which the Contractor has a financial interest as defined in Government Code section 87103. Contractor represents that it has no knowledge of any financial interests which would require it to disqualify itself from any matter on which it might perform services for the County.

“Contractor” means an individual who, pursuant to a contract with a state or local agency:

(A) Makes a governmental decision whether to:

1. Approve a rate, rule or regulation;
2. Adopt or enforce a law;
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
4. Authorize the County to enter into, modify, or renew a contract provided it is the type of contract that requires County approval;
5. Grant County approval to a contract that requires County approval and to which the County is a party, or to the specifications for such a contract;
6. Grant County approval to a plan, design, report, study, or similar item;
7. Adopt, or grant County approval of, policies, standards, or guidelines for the County, or for any subdivision thereof; or

(B) Serves in a staff capacity with the County and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the County that would otherwise be performed by an individual holding a position specified in the County's Conflict of Interest Code.

### DISCLOSURE DETERMINATION:

1. Contractor will not be “making a government decision” or “serving in a staff capacity” as defined in Sections A and B above. No disclosure required.
2. Contractor will be “making a government decision” or “serving in a staff capacity” as defined in either Section A or B above. As a result, Contractor shall be required to file a Statement of Economic Interest with the Clerk of the Board of Supervisors in a timely manner as required by law.



## **Attachment M - Scope of Work**

**For**

**Invitation to Negotiate No. ROV120-ROV3459  
Electronic Poll Books**

## Scope of Work

### **A. BACKGROUND INFORMATION**

#### **1. General County Background**

The County of San Bernardino (County) is the largest county by area in the contiguous United States, covering more than 20,000 square miles. The County borders Riverside, Los Angeles, Orange, Kern, and Inyo counties, as well as the states of Arizona and Nevada. The County is comprised of both urban and rural communities – 24 of which are incorporated cities and towns. More than 90% of the County is within the desert region, with the remaining areas in mountain and valley regions. The population in 2017 was 2.16 million people, with 42% speaking a language other than English in their home. The population is projected to grow 28% over the next 25 years.

The County's Registrar of Voters (ROV) office is responsible for conducting efficient and impartial elections, and providing the means by which every eligible citizen in the county can exercise their voting rights and privileges, as provided by the laws and regulations that govern elections in California. The ROV conducts all federal, state, county, city, school district and special district elections for the citizens of the County. The County has more than 986,000 registered voters of which approximately 330,000 are polling place voters and 656,000 are permanent mail ballot voters. As with other California counties, the County of San Bernardino is experiencing increases in the overall number of registered voters and increases in the number of voters opting to receive a mail ballot.

Election statistics:

Election	Registered Voters	Total Ballots Cast	Percent Turnout	Mail Ballots Cast	Mail Ballot Turnout	Poll Ballots Cast	Poll Ballots Turnout
2018 General Election	983,803	546,041	58.16%	336,873	35.88%	209,168	22.28%
2018 Primary Election	902,244	281,045	31.15%	187,864	20.82%	93,181	10.33%
2016 General Election	888,019	672,871	75.77%	385,556	43.42%	287,315	32.35%
2016 Primary Election	784,130	339,754	43.33%	200,328	25.55%	139,426	17.78%

Election	Number of Voting Precincts	Number of Ballot Types	Number of Ballot Styles	Number of Ballot Cards	Number of Measures	Number of Contests
2018 General Election	2,209	2209	459	2	22	178
2018 Primary Election	1,856	1856	56	2	8	42
2016 General Election	1,789	1789	287	2	23	140
2016 Primary Election	1,772	1,772	320	1	5	39

Estimated Election Statistics:

It is anticipated that in the March 2020 Primary Election, approximately 1.1 million voters will be eligible to participate in the election, and of those voters approximately 61% of total voters will cast ballots in more than 2,500 precincts. Of the overall voter turnout, it is also anticipated that an estimated 62% of total ballots cast will be mail ballots, and an estimated 38% of ballots cast will be polling place ballots.

## 2. Project Analysis and History

The ROV's current voting model consists of more than 400 polling places and 6 satellite sites. The ROV currently uses a traditional, paper-based voter check in process. Official rosters containing a list of eligible voters in the precincts assigned to a specific polling place are printed and delivered to polling place supervisors prior to Election Day. Supplemental rosters containing any updated voter information effective prior to the close of registration but processed after the official roster was printed, are printed and delivered to polling places on Election Day by field support staff.

With increased voter registration and mandated expansions to services provided to voters both at polling places and satellite locations, the ROV is looking for technical solutions to quickly and efficiently check in and process voters. Updated equipment is needed to keep pace with changes to voting opportunities while remaining true to the ROV's commitment to providing an accessible and efficient voting process for all citizens, while at the same time continuing to ensure accuracy, security, and transparency in the voting process.

Furthermore, the County is looking to implement a traditional polling place model for major statewide elections for 2020 with a potential to transition to a vote center model in future elections pending the County Board of Supervisors consideration and approval.

California Elections Code section 2550(b) requires that electronic poll books used in California be certified by the Secretary of State (SOS).

## **B. PROJECT DESCRIPTION**

### 1. Purpose of Project

#### a. County Goal(s) and Objectives

##### County Goal(s)

Improve County Government Operations.

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

##### County Objective

Monitor and evaluate operations and implement strategies to continually improve efficiency, effectiveness and collaboration.

Make strategic investments in technology, data sharing, and analytics to improve efficiency, effectiveness, transparency, and collaboration.

#### b. Procurement Goal(s)

To procure electronic poll books with the flexibility to be used in any voting model afforded in California law by utilizing modern technology in a transparent, secure, and cost-effective manner.

#### c. Procurement Strategies

Solicit options for a polling place voting model.

Partner with a vendor who has extensive knowledge and experience with California elections code, law and regulations, business practices and technology.

### 2. Deliverables (General)

#### a. Timeframe

The County is seeking electronic poll books to be tested and fully functional in preparation for the 2020 Presidential Primary Election. In order to meet this deadline, the vendor must deliver a sufficient number of components to complete user acceptance testing no later than October 2019. Any

outstanding components not required to perform user acceptance testing will be delivered on a timeline mutually agreed to by the vendor and the County at a later date.

**b. Completion Criteria and Final Acceptance**

Upon the successful completion of the following criteria the County will complete final acceptance of the system:

1. System development
2. Complete delivery of system components and software
3. User acceptance testing
4. Establish appropriate operational diagnostics, emergency operations and disaster recovery plans for business continuity
5. Provide training, documentation, and materials to County elections staff
6. Delivery of a variety of outreach materials with an emphasis on familiarizing the County's residents with the proposer's system(s).

**3. Deliverables**

**Electronic Poll Book**

**1. Integration**

- a. Describe your proposed solution and its ability to meet all State of California requirements.
- b. System shall have the capability to operate with and without a live connection to the Election Management System (EMS).
- c. Describe the instruction provided to staff in the event the poll book becomes disconnected from the EMS.
- d. Describe the ability of the solution to resume normal operation when the connection is restored to the central EMS.
  - i. Include how transactions are queued when the connection is lost.
- e. Describe the system's capability to record and receive voting credit in near real-time to/from the central EMS and/or VoteCal and to provide notification of voters who have voted as required by EC §14294.
  - i. Describe the architecture of how this will work.
- f. Describe the system's capability to record and receive voter records in near real time and the integration with the County EMS and/or VoteCal.
- g. Describe the ability for the County to define whether to include or exclude voters based on their registration status (e.g. active, inactive, and pending) as defined in 2 Cal. Code Regs §20108.1 and §20108.18
- h. Describe how an image of the electronic signature made by the voter on the device shall be retained and identified as the signature of the voter.
- i. Describe any functionality that allows the central office to send messages or communicate with Vote Center staff.
- j. Describe if the staff has the ability to submit a problem directly to a helpdesk system using the device.
- k. Describe the ability of the solution to receive and transmit (synchronize) ballot statuses in near real time.

**2. Usability**

- a. Describe the following instructions provided to staff in the following scenarios and indicate which, if any, are configurable:
  - i. when the voter has an issued ballot which has not been accepted by an election official in the current election anywhere in California.
  - ii. when a ballot for the voter has been accepted for the current election anywhere in California.
  - iii. when a voter is required to show ID under the Help America Vote Act.
  - iv. when voters affiliated with non-qualified parties or No Party Preference are allowed to "cross-over" to parties defined as allowing cross over in a closed primary election in EC §13102(c).

- b. Describe the ability of the system to record voters who “cross-over” to other parties in a closed primary election.
- c. Describe the system’s ability to produce pre-filled forms and other built-in available forms.
  - i. For example: Provisional Applications, Early Vote Ballot Applications, Cannot Surrender Ballot form.
- d. Describe the ability of the system to provide near-real-time summary, trends, problems, turnout, wait times of all voting locations and their respective components.
- e. Describe the ability to provide a limited subset of this information to the public (e.g. wait times).

### 3. Logistics

- a. Electronic poll books shall be light enough for either a poll worker or an election staff member to be able to lift and carry.
  - i. Provide device specifications, including dimensions and weight.
- b. Describe how the devices are protected during transport from movement, and elements such as moisture and extreme heat. Include the steps required by election staff, and poll workers to set up, and close the devices to prepare for transport.
- c. Electronic poll books shall be stored between elections, using minimal warehouse space.
  - i. Describe how the devices are stored, include the footprint, maintenance requirements and electrical and environmental requirements, such as temperature restrictions.
- d. Describe the standard electrical requirements for use at a polling place or satellite location.
- e. The system shall operate on internal or backup power for a minimum of 12 hours.
  - i. Describe backup battery life at full charge.
- f. Describe the power draw for each device. Describe mass charging (e.g. daisy chained) requirement prior to deployment.
- g. The devices shall display a unique serial number in both a machine readable barcode format and in plain text format. The serial number shall be in an easily accessible location.

### 4. Capacity

- a. System shall have the ability to contain voter registration data for over 3-million voter records. Including:
  - i. Name, residence address, ballot type, party preference (primary only), year of birth, ballot status, HAVA ID Requirements.
- b. The device must be able to handle a minimum of 250 transactions per hour.
- c. Describe the ability of the solution to receive and transmit (synchronize) voter registration updates in near real time.

### 5. Security

- a. Describe the ability to track the location of components, such as GPS tracking capabilities.
- b. The system shall log all activities performed on the system utilizing a tamper proof / evident method to include failure or success in system activation, object access, account management, and other relevant system events.
- c. Describe methods for validation of system hardware and software integrity.
- d. The system shall provide separate logins for the end user and administrative functions.
- e. Describe remote management and security features, such as the ability to remotely wipe the device, ensure encryption, and how to prevent unauthorized access in this scenario.
- f. The system shall log access and generate reports.
  - i. Describe how the system generates reports for:
    - 1. User accounts access control (including any service accounts required for operations, password expirations, last time used, user categories, user IDs).
    - 2. Systems’ security controls listing the security configuration parameters configurable by the customer.
    - 3. User based reports including user ID, and all system(s) that it has been (or currently is) logged into. The report shall include the system names, login/logoff times and objects accessed.
- g. The system shall log login attempts and provide an audit trail.
  - i. Describe information captured from login attempts including: user name, user ID, date/time, resource accessed/modified (as applicable).
- h. Security logs shall be recorded in a tamper proof/evident format.

- i. Describe the log format utilized for your logs.
    - 1. Example of logs: system, security (access), change logs capturing configuration, account changes, or access of objects.
- i. The proposer shall securely transmit data.
  - i. Describe how the proposer provides secure data transmission over networks.
- j. The proposer shall implement best practices for access control.
  - i. Describe where these standards can be used through procedures and system capabilities that prevent and limit and detect access to critical system components in order to guard against loss of system integrity, availability, confidentiality, and maximize accountability.
- k. The system to provide features, functions, and capabilities to perform user administration and assign roles and access privileges (including service accounts). All changes will be logged.
- l. Describe the Proposer and customer responsibilities and workflows for secure access to ensure compliance and data security, confidentiality, and integrity of systems and data.
- m. The Contractor shall provide documented backup and restore and disaster recovery capabilities.
  - i. Describe features of the disaster recovery model, including encryption and access control. If disaster recovery model includes storage of data at a location other than the County, describe the location ensuring it is within the continental United States.
- n. The Contractor shall immediately notify designated County security personnel of any potential breach or risk, including when:
  - i. County data may be at risk.
  - ii. County data may be at risk of unauthorized disclosure(s).
  - iii. County data may have been or has been breached.
  - iv. County data is subpoenaed through a legal channel.
  - v. County data may be inaccessible due to supplier disputes, bankruptcy, or other business and legal scenarios.
  - vi. County data or copy of County data or any replica, or digital shadow has been intentionally or accidentally copied or moved to a non-U.S. geography or non- County authorized third party.
  - vii. Any discovered vulnerabilities of the system or system that has been certified previously.
- o. Describe your data auditing processes.
- p. The Contractor shall maintain background checks for employees.
  - i. Describe your employees and Contractors' background- check level and frequency (for employees and Contractors who program, secure, administer, or service equipment or storage containing regulated data).
  - ii. Certify all employees working on this program have passed background checks prior to working.

## **Maintenance and Support**

### **1. Hardware**

- a. Proposer shall replace components on a schedule as dictated by life expectancy.
  - i. Provide an expected replacement plan for each component covering the length of the contract.

### **2. Software**

- a. Proposer shall provide County with updated software/firmware upon certification by the California SOS.

### **3. Services/Support**

- a. Proposer and County shall both designate and authorize representatives as multiple contact points to ensure that County elections are not adversely impacted. These representatives will be responsible for coordinating and implementing the services defined within this Scope of Work. The Vendor shall act only on instruction from one of these designated Elections Office representatives.
- b. Representatives from both the County and Proposer shall be available twenty-four (24) hours a day and seven (7) days a week during peak election periods as reasonably established in advance by the County.



#### **4. Formal / Scheduled Meetings**

- a. The proposer shall be available for the following regularly scheduled meetings as determined by the County:
  - i. Evaluation
    1. In person demonstration of electronic poll books
    2. In person site walk for determining logistical and infrastructure requirements of the system.
  - ii. Implementation
    1. Project overview / timeline meeting
    2. Weekly project status meetings
    3. User acceptance testing and training status
    4. Project finalization meeting
  - iii. Maintenance / Support
    1. Product Advisories / Release Schedule Meetings
    2. Additional User Requirement Gathering Meetings
    3. Election preparation and debrief.

#### **Manner of Delivery**

1. Physical goods shall be delivered and tested with a verifiable chain of custody before the go-live date.
2. Software components shall be delivered, installed, and tested with a method to verify the integrity of the product before the go-live date.
3. If software components are delivered digitally, the delivery method shall utilize encryption and appropriate access controls.
4. The proposer shall provide a method for the County to acquire additional and current copies of software.
5. The County will deem components as accepted only after testing has proven functionality of all components.
6. All documentation and training material relating to the use of the solution shall be provided in soft copy.