

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

January 13, 2026

**FROM**

**JOSIE GONZALES, Assessor-Recorder-County Clerk**

**SUBJECT**

Agreement with SmartBear for Software Services

**RECOMMENDATION(S)**

1. Terminate non-financial Terms of Use Agreement No. 24-1006 with SmartBear Software, Inc.
2. Approve non-financial Terms of Use **Agreement No. 26-28** with SmartBear Software, Inc., including non-standard terms, for software services, effective January 13, 2026, and continuing until terminated by either party.
3. Authorize the Departmental Information Systems Administrator to electronically accept the Terms of Use Agreement in Recommendation No. 2 related to software services offered by SmartBear Software, Inc.

(Presenter: Josie Gonzales, Assessor-Recorder-County Clerk, 382-3204)

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

**Improve County Government Operations.**

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

**FINANCIAL IMPACT**

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost). The SmartBear Terms of Use Agreement (Agreement) is non-financial in nature and does not commit the County to make any purchases. When future purchases are made under this Agreement, County purchasing policies will be adhered to, and the Assessor-Recorder-County Clerk Department (ARC) will return to the Board of Supervisors (Board) for approval, if necessary.

**BACKGROUND INFORMATION**

The Assessor Division of ARC is responsible for locating, describing, and identifying ownership of property within the county; establishing a taxable value for properties subject to taxation; applying applicable legal exemptions; and publishing annual and supplemental assessment rolls. The ARC is the main data source for many internal and external public agencies, property owners, and business entities for public records. The Property Information Management System (PIMS) was modernized to a supportable IT platform that uses current and industry standard programming languages. The new modernized system is called the Modernized Property Information Management System (ModPIMS).

## Agreement with SmartBear for Software Services January 13, 2026

On October 22, 2024 (Item No. 12), the Board of Supervisors (BOS) approved a non-financial Terms of Use Agreement No. 24-1006 with SmartBear, including non-standard terms, for software services, effective October 22, 2024, and continuing until terminated by either party.

On February 13, 2025, the vendor substantially revised the terms of the Agreement. ARC received notice of the change at the time of service renewal. This item is being presented at this time for approval of the revised Agreement in anticipation of ARC renewing service with SmartBear.

The SmartBear software services support automated testing across multiple internal applications and projects, including work performed under the ModPIMS Project. The software services provide tools that allow staff to build and run test scripts that verify system behavior after each change. This replaces slow manual testing and gives the team a consistent way to confirm that updates function as expected. The automation improves coverage, reduces human error, and supports repeatable standard Quality Assurance processes (QA) across multiple subsystems.

ARC has integrated these tools into its QA processes for internal applications. Automated testing after each change reduces QA time by about 50 percent. The smoke tests, which are preliminary checks of multiple sub-systems prior to building them out, confirm core functions work before detailed testing begins. This lowers regression issues and supports faster delivery of enhancements.

Recommendation No. 3 would authorize the Departmental Information Systems Administrator to electronically accept the click wrap Agreement for SmartBear software services for an indefinite period of time until terminated by either party.

The Agreement is Smartbear's standard commercial contract, which includes terms that differ from the standard County Contract and omits County standard contract terms. The non-standard and missing terms include the following:

1. Governing law is New York.
  - The County standard contract requires California governing law.
  - Potential Impact: The contract will be interpreted under New York law. Any questions, issues or claims arising under this contract will require the County to hire outside counsel competent to advise on New York law, which may result in fees that exceed the total contract amount.
2. Smartbear may change the Terms and Conditions at any time.
  - The County standard contract requires that any changes to the contract to be 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.
  - Potential Impact: The County could be agreeing to new terms without review by anyone, including County Counsel, and without the approval of the new terms by the Board. County Counsel cannot advise on whether and to what extent New York law may affect the enforceability of unilateral changes to the terms.
3. SmartBear may assign the Agreement in its entirety (including all orders), without notice and without the County's consent, to an Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

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- The County standard contract requires that the County must approve any assignment of the contract.
  - Potential Impact: SmartBear could assign the Agreement to a third party or business with which the County is legally prohibited from doing business due to issues of Federal debarment or suspension and conflict of interest, without the County's knowledge. Should this occur, the County could be out of compliance with the law until it becomes aware of the assignment and terminates the Agreement. County Counsel cannot advise on whether and to what extent New York law may permit or restrict a party's right to assign without an express provision in the Agreement.
4. There is no provision in the Agreement addressing each party's responsibility for paying attorneys' fees.
- The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
  - Potential Impact: County Counsel cannot advise on, whether and to what extent, New York law may affect a party's requirement to pay the prevailing party's attorneys' fees and costs in a legal action where no specific provision is provided in the Agreement.
5. The County is required to indemnify Smartbear against third- party claims related to: (i) the County's unauthorized supply, disclosure, or processing of County Data (including Personal Data) or County Data's infringement of third party intellectual property rights, (ii) County's violation of laws applicable to County's business.
- The County standard contract does not include any indemnification or defense by the County of a Contractor.
  - Potential Impact: By agreeing to indemnify Smartbear, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time-limited, or expense-limited could be brought against Smartbear without such limitations and the County would be responsible to defend and reimburse Smartbear for costs, expenses, and damages, which could exceed the total contract amount. County Counsel cannot advise on, whether and to what extent, New York law may limit or expand this contract term.
6. The contract does not require Smartbear to meet the County insurance standards.
- The County standard contract requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.
  - Potential Impact: The contract does not include County standard insurance requirements. This means that the County has no assurance that Smartbear will be financially responsible for claims that may arise from the County's use of the software, which could result in expenses to the County that exceed the total contract amount.
7. The liability of both parties is limited to the amount paid by County in the 12 months preceding the incident giving rise to the claim, excluding the County's payment obligations or violation of SmartBear's intellectual property rights, but without excluding a party's indemnification obligations, gross negligence, willful misconduct, or violation of law.
- The County standard contract does not include a limitation of liability.
  - Potential Impact: Claims could exceed the liability cap and the Agreement amount leaving the County financially liable for the excess. County Counsel cannot advise

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on, whether and to what extent, New York law may limit or expand the exclusion of limits to the extent prohibited by applicable law.

8. Payment terms are Net 30 date of invoice with late payment interest of up to 1.5% per month, calculated daily and SmartBear may suspend County's access to the SmartBear technology, including, without limitation, the County's account, until such unpaid fees are paid in full.
  - County standard payment terms are Net 60 days with no interest or late payment penalties.
  - Potential Impact: County standard processing time is 60 days or more. Failing to pay within 30 days from the date of invoice may result in a material breach of the Agreement, which could allow SmartBear to terminate the Agreement and seek other legal remedies, including charging the County interest at a rate of 1.5% per month, which could exceed the Agreement amount, and suspend the County's access to the service.
  
9. The County may not terminate the Agreement for convenience. The County may only terminate the Agreement by providing 60 days prior to the next renewal date. In addition, the County agrees to a non-cancelable payment obligation and non-refundable fees.
  - County Policy 11-05 requires that the County have the right to terminate the contract, for any reason, with a 30-day written notice of termination without any obligation other than to pay amounts for services rendered and expenses reasonably incurred prior to the effective date of termination.
  - Potential Impact: The County can only terminate the Agreement during the term for an uncured breach by SmartBear. Any attempted termination by County without cause could result in payment liability for the full Agreement amount, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.
  
10. Venue is in the courts in the State of New York.
  - The County standard contract requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
  - Potential Impact: Having a venue in the State of New York may result in additional expenses that exceed the amount of the Agreement.

Approval of the Agreement, including non-standard terms, with SmartBear would authorize future purchases of SmartBear software services, subject to County Purchasing policies. Because SmartBear's Terms of Use are structured as an indefinite, clickwrap-style agreement and the vendor has substantially revised those terms, this action terminates the prior Board-approved Terms of Use and replaces them with the updated Terms of Use. The SmartBear services provide functionality needed for accurate and repeatable testing, and support for secure and stable software releases. ARC recommends approval of this item because this service reduces manual workload, shortens release cycles, and improves overall system reliability.

**PROCUREMENT**

N/A

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on December 30, 2025; Purchasing (Jessica Barajas, Supervising Buyer,

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387-2065) on December 11, 2025; Innovation and Technology Department (Lynn Fyhrlund, Chief Information Officer, 388-5501) on December 18, 2025; Risk Management (Stephanie Pacheco, Staff Analyst II, 386-9039) on December 15, 2025; and County Finance and Administration (Kathleen Gonzalez, Administrative Analyst, 387-5412) on December 23, 2025.

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Record of Action of the Board of Supervisors  
San Bernardino County

**APPROVED (CONSENT CALENDAR)**

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

Lynna Monell, CLERK OF THE BOARD

BY   
DATED: January 13, 2026



cc:    ARC - Robbins w/agree  
      Contractor - c/o ARC w/agree  
      File - w/agree  
CCM  01/20/2026