

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

May 21, 2024

FROM

TRACY REECE, Chief Probation Officer, Probation Department

SUBJECT

Non-Financial Terms and Conditions with Sign In App for Software Subscription

RECOMMENDATION(S)

1. Approve non-financial Terms and Conditions, including non-standard terms (**County Contract No. 24-445**), with Sign In App Inc., for a subscription to use software providing site security and disaster accountability, for a term beginning May 22, 2024, and automatically renewing until terminated by either party.
2. Authorize the Chief Probation Officer to electronically accept the online Terms and Conditions approved in Recommendation No. 1.

(Presenter: Tracy Reece, Chief Probation Officer, 387-5692)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Provide for the Safety, Health and Social Service Needs of County Residents.

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 Sign In App Inc. (Sign In App) Terms and Conditions are non-financial in nature and do not commit the County to make any purchases. Any purchases made under these Terms and Conditions by the Probation Department (Probation) will adhere to County purchasing policies, and if necessary, Probation will return to the Board of Supervisors for approval.

BACKGROUND INFORMATION

Probation currently utilizes the Sign In App software for site security and disaster accountability at two locations and would like to expand its use to three additional sites. Each site purchase includes individual licensing and dedicated hardware to run the proprietary software. In order for each new site to be compatible and function with the other Probation sites using this software, it must purchase the Sign In App SaaS solution.

The Sign In App Terms and Conditions (Agreement) is Sign In App's standard contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. While Probation tried to negotiate the terms to the County standards, Sign In App would not agree to the County standard terms. The non-standard and missing terms include the following:

1. The governing law is Delaware.

**Non-Financial Terms and Conditions with Sign In App for Software
Subscription
May 21, 2024**

- The County standard contract requires California governing law.
 - Potential Impact: The Terms and Conditions will be interpreted under Delaware law. Any questions, issues or claims arising under these Terms and Conditions will require the County to hire outside counsel competent to advise on Delaware law, which may result in fees that exceed the total quote amount.
2. 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, Delaware 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.
 3. The term of the Agreement is automatically renewed annually until canceled by the County or terminated by either party.
 - County Policies 11-05 and 11-06SP1 do not permit indefinite terms or automatically renewing contracts except for end user license agreements, software/hardware licenses and subscriptions, and master services agreements or unless approved by the Board of Supervisors.
 - Potential Impact: There is no end term to the Agreement and the County is indefinitely bound to the terms and conditions of the Agreement until the County gives notice of termination at least 60 days prior to the end of the applicable subscription term or the contract is terminated by either party 30 days after written notice for an uncured breach.
 4. The County is required to indemnify Sign In App against any demand or civil, criminal, administrative or investigative claim or proceedings commenced or threatened by a third party arising from a willful breach of obligations, the use of Sign In App's products in a manner not permitted by the Agreement or for the County's infringement or misappropriation of a third party's intellectual property rights.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify Sign In App, 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 Sign In App without such limitations and the County could be responsible to defend and reimburse Sign In App for costs, expenses, and damages, which could exceed the total Agreement amount. County Counsel cannot advise on, whether and to what extent, Delaware law may limit or expand this Agreement term.
 5. The Agreement does not require Sign In App to meet the County's insurance standards as required pursuant to County Policies 11-05, 11-07 and 11-07SP.
 - County policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and as set forth in County policy and in the County standard contract.

**Non-Financial Terms and Conditions with Sign In App for Software
Subscription
May 21, 2024**

- Potential Impact: The County has no assurance that Sign In App will be financially responsible for claims that may arise under the Agreement, which could result in expenses to the County that exceed the total Agreement amount.
6. Sign In App's maximum liability to the County is limited to the amount of fees paid by the County in the 12 months prior to the month in which the claim arose, excluding (a) breach, violation, infringement, or misappropriation of the other's or a third party's intellectual property rights or the confidentiality obligations; and (b) breach of data protection obligations.
- 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 on, whether and to what extent, Delaware law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
7. Payment is due within 15 days of the invoice date with late payment interest penalty at the annual rate of 4% above the base rate of the Bank of England accrued daily, and to withhold or suspend access to the product and/or terminate the Agreement.
- 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 15 days may result in a material breach of the Agreement and seek other legal remedies, including charging the County interest at a rate of 4% above the base rate of the Bank of England, which could exceed the Agreement amount. Sign In App may also suspend the services or terminate the Agreement.
8. The Agreement requires that County employees and contractors may not disclose information marked as confidential without a written agreement.
- The County standard contract does not require its employees to sign written confidentiality agreements.
 - Potential Impact: The County is required to maintain written confidentiality agreements with all County employees, as well as include a confidentiality provision in all contracts for all contractors and their employees, agents, and subcontractors any of whom will be accessing the Sign In App's confidential information. The County could be deemed in breach of contract and incur liability to Sign In App for disclosure of Sign In App's information, regardless of whether the disclosure is intentional or inadvertent, which could include monetary damages that exceed the Agreement amount.
9. Sign In App may assign the Agreement without notice to the County or without the County's approval.
- The County's standard contract requires that the County must approve any assignment of the contract.
 - Potential Impact: Sign In App 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. Counsel cannot advise on whether and to what extent Delaware law may permit or restrict a party's right to assign without an express provision in the Agreement.

**Non-Financial Terms and Conditions with Sign In App for Software
Subscription
May 21, 2024**

10. The County may not terminate the Agreement for convenience. 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 Sign In App. 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.

11. Venue for disputes arising under the Agreement is in Delaware.
 - County Policy 11-05 requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: Having a venue in Delaware may result in additional expenses that exceed the amount of the Agreement.

Probation recommends approval of the Agreement, including the non-standard terms, to enable the County to utilize the site security and disaster accountability services at additional locations and continue to provide for the health and safety of the County.

PROCUREMENT

The Purchasing Department continues to support this non-competitive sole source procurement, as the hardware and software are proprietary and not resold by any other entity.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on April, 16, 2024; Purchasing (Ariel Gill, Supervising Buyer, 387-2065) on April 11, 2024; Risk Management (Victor Tordesillas, Director, 386-8623) on April 17, 2024; Finance (Jevin Kaye, Principle Administrative Analyst, 387-4205) on May 2, 2024; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on May 2, 2024.

**Non-Financial Terms and Conditions with Sign In App for Software
Subscription
May 21, 2024**

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.), Dawn Rowe, Curt Hagman, Joe Baca, Jr.
Absent: Jesse Armendarez

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: May 21, 2024



cc: Probation - Harps w/agree
Contractor - c/o Probation w/agree
File - w/agree
CCM 05/28/2024