

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

March 15, 2022

FROM

LARRY AINSWORTH, Chief Information Officer, Innovation and Technology Department

SUBJECT

Terms and Conditions with Singlewire Software LLC for Informacast Software Maintenance Subscription

RECOMMENDATION(S)

1. Approve Terms and Conditions **Agreement No. 22-189**, including non-standard terms, with Singlewire Software LLC for Informacast software maintenance subscription, in purchase amounts as authorized by County Policy for the period of March 15, 2022 through March 14, 2027.
2. Approve Subscription **Agreement No. 22-190** for Informacast Fusion and Informacast Mobile software as a service, including non-standard terms, with Singlewire Software LLC for Informacast software maintenance subscription, in purchase amounts as authorized by County Policy for the period of March 15, 2022 through March 14, 2027.

(Presenter: Larry Ainsworth, Chief Information Officer, 388-5501)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

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

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The Terms and Conditions (Terms) and Subscription Agreement for Informacast Fusion and Informacast Mobile software as a service (SaaS) (SA) are non-financial in nature and do not commit the County to make any purchases. If future purchases are made under the Terms or SA, the Innovation and Technology Department (ITD) will adhere to County purchasing policies and return to the Board of Supervisors (Board) for approval, if necessary.

BACKGROUND INFORMATION

ITD maintains the countywide Cisco Voice Over Internet Protocol (VoIP) network. One of the features used is Informacast paging. County departments employ Informacast paging software for day-to-day paging operations and emergency onsite paging within County buildings. During emergencies, Informacast software is used to page employees to notify them of emergency situations or security issues. Additionally, Informacast is also able to integrate with various legacy overhead paging systems still in use by some County departments, which allows the County to capitalize on existing equipment and run a digital hybrid paging environment. Informacast is fully integrated with the Cisco Call Manager currently utilized by County departments. ITD utilizes Singlewire's maintenance services to troubleshoot and assist with Informacast software upgrades as it relates to integration with the Call Manager.

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Singlewire's Terms are Singlewire's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. The non-standard and missing terms include the following:

1. Governing law is Wisconsin.
 - The County standard contract requires California governing law.
 - Potential Impact: The Terms will be interpreted under Wisconsin law. Any questions, issues or claims arising from the Terms will require the County to hire outside counsel competent to advise on Wisconsin law, which may result in fees that exceed the total Terms amount.
2. Singlewire may assign or subcontract the Terms without County's consent and without notice.
 - The County must approve any assignment of the Terms.
 - Potential Impact: Singlewire could assign the Terms 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. County Counsel cannot advise on whether and to what extent Wisconsin law may permit or restrict a party's right to assign without an express provision in the Terms.
3. The Terms do not address attorneys' fees and costs, except that in the event of a payment default, the County is responsible for all of Singlewire's costs of collection, including, but not limited to, court costs, filing fees and reasonable 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, Wisconsin 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 Terms.
4. The Terms do not require Singlewire to meet the County's insurance standards as required pursuant to County Policy 11-07.
 - The County Policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and set forth in the County standard contract.
 - Potential Impact: The Terms do not include any County standard insurance requirements. This means that the County has no assurance that Singlewire 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 Terms amount.
5. Singlewire limits its aggregate and cumulative liability under the Terms to the County to the total dollar amount paid to Singlewire by the County for the products or services giving rise to the claim, except for damages arising from Singlewire's willful misconduct.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: The limitation of liability may apply to claims arising under Singlewire's indemnification obligations or from Singlewire's gross negligence or

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violation of law. Claims could exceed the liability cap and the Terms amount leaving the County financially liable for the excess. In addition, the County's liability under the Terms is not similarly limited. County Counsel cannot advise on, whether and to what extent, Wisconsin law may limit or expand the exclusion of limits to the extent prohibited by applicable law.

6. The County is barred from bringing any legal action arising from any product, services, or the Terms more than one year after the claim arises.
 - The County standard contract does not include a limit on the time to bring action.
 - Potential Impact: Limiting the County's ability to bring suit to one-year amounts to a waiver of the Statute of Limitations for claims and shortens the period of time in which the County may file a lawsuit under the Terms. There is no such limitation for Singlewire's ability to bring legal action against the County.

7. Venue is in Dane County, Wisconsin.
 - 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 Dan County, Wisconsin may result in additional expenses that exceed the amount of the Terms.

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

1. There is no governing law provision in the SA.
 - The County standard contract requires California governing law.
 - Potential Impact: The SA will be interpreted under laws where an action is brought. Any questions, issues or claims arising under this SA will require the County to hire outside counsel competent to advise on the appropriate law, which may result in fees that exceed the total SA amount.

2. The SA is silent on whether a party may assign the SA without notice and without the other party's consent.
 - The County must approve any assignment of the SA.
 - Potential Impact: Singlewire could assign the SA 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. There is no restriction under California law. County Counsel cannot advise on whether and to what extent another jurisdiction's governing law may permit or restrict a party's right to assign without an express provision in the SA.

3. The SA does not address attorneys' fees and costs.
 - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: Each party would bear its own costs and attorneys' fees in a contract dispute under California law. County Counsel cannot advise on, whether and to what extent, another jurisdiction's law may affect a party's

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requirement to pay the prevailing party's attorneys' fees and costs in a legal action where no specific provision is provided in the SA.

4. The SA does not require Singlewire to indemnify the County, as required under County Policy 11-07, including for intellectual property infringement claims.
 - The County standard contract indemnity provision requires the Contractor to indemnify, defend, and hold County harmless from third party claims arising out of the acts, errors, or omissions of any person. 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.
 - Potential Impact: If the County is sued for any claim, including intellectual property infringement based on its use of Singlewire's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total SA amount.
5. The SA requires the County to indemnify, defend and hold Singlewire harmless from any third-party claim arising out of: (a) County data or content, (b) County's use of the service, or (c) County's breach of the SA.
 - The County standard contract does not include any indemnification or defense by the County of a Contractor.
 - Potential Impact: By agreeing to indemnify Singlewire, 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 Singlewire without such limitations and the County would be responsible to defend and reimburse Singlewire for costs, expenses, and damages, which could exceed the total SA amount.
6. The SA does not require Singlewire to meet the County's insurance standards as required pursuant to County Policy 11-07.
 - The County Policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and set forth in the County standard contract.
 - Potential Impact: The SA does not include County standard insurance requirements. This means that the County has no assurance that Singlewire 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 SA amount.
7. The term of the SA is indefinite.
 - County Policy 11-06SP1 does not permit indefinite term or automatically renewing contracts unless approved by the Board.
 - Potential Impact: There is no end term to the SA and the County is indefinitely bound to the terms and conditions of the SA until terminated as permitted under the Terms.

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8. There is no venue state in the SA.
 - 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 anywhere except in San Bernardino County may result in additional expenses that exceed the amount of the SA.

ITD recommends approval of the Singlewire Terms and SA, including non-standard terms, which will allow ITD to utilize Singlewire's software maintenance subscription for critical paging software for the period of March 15, 2022 through March 14, 2027.

PROCUREMENT

The Terms and SA, including non-standard terms, will be used to accompany future purchase orders to be approved, as necessary, per County Policy 11-04, Procurement of Goods, Supplies, Equipment, and Services.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5455) on February 11, 2022; Purchasing (Tevan Stremel, Buyer III, 387-2098) on February 8, 2022; Risk Management (Victor Tordesillas, Director, 386-8623) on February 15, 2022; Finance (Sofia Almeida, Administrative Analyst, 387-4378) on February 28, 2022; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on February 28, 2022.

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: March 15, 2022



cc: IT - Danczyk w/agrees
Contractor - C/O IT w/agree
File - w/agree
CCM 03/17/2022