

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

July 30, 2024

FROM

ENSEN MASON, Auditor-Controller/Treasurer/Tax Collector

SUBJECT

SAP Cloud Order Form Agreement with SAP Public Services, Inc. for Software and Infrastructure Services

RECOMMENDATION(S)

Approve SAP Cloud Order Form **Agreement No. 24-674**, including non-standard terms, with SAP Public Services, Inc., for software as a service and infrastructure as a service, in an amount not to exceed \$20,701,203, for the period of July 31, 2024, through September 8, 2029. (Presenter: John Johnson, Assistant Auditor-Controller/Treasurer/Tax Collector, 382-7005)

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 cost for the S/4 HANA with RISE subscription will be funded with a General Fund allocation approved by the Board of Supervisors (Board) as part of the 2024-25 budget on June 11, 2024 (Item No. 110).

The total cost of the five-year SAP Cloud Order Form Agreement (Agreement) is \$20,701,203, which includes a base cost of \$18,368,150 for the SAP S/4 HANA with RISE subscription, and \$2,333,053 for the SAP Ariba subscription, software support, infrastructure support, and maintenance. The cost for the SAP Ariba subscription will be offset by ongoing savings anticipated as a result of the current on-premise maintenance and support costs ending on December 31, 2025. Sufficient appropriation has been included in the Auditor-Controller/Treasurer Tax Collector's (ATC) 2024-25 budget and will be included in future recommended budgets.

The table below outlines the amounts in the Agreement's pricing summary by software and year for the term of the Agreement. The cost for the SAP Ariba subscription in years one and two reflects the Ariba Business Network service only, which will be used to help streamline vendor catalogs. For years three through five, the entire SAP Ariba suite will be utilized to replace the County Electronic Procurement System (ePro) and SAP's Supplier Relationship Management module. The incremental cost of S/4 HANA with RISE subscription is primarily due to required application support starting in year two and three, following the implementation of the SAP Ariba suite.

**SAP Cloud Order Form Agreement with SAP Public Services, Inc. for
Software and Infrastructure Services
July 30, 2024**

	Year 1	Year 2	Year 3	Year 4	Year 5	Five-Year Total
SAP S/4 HANA with RISE	\$3,601,939	\$3,648,289	\$3,705,974	\$3,705,974	\$3,705,974	\$18,368,150
SAP Ariba	\$166,493	\$166,493	\$666,689	\$666,689	\$666,689	\$2,333,053
Total	\$3,768,432	\$3,814,782	\$4,372,663	\$4,372,663	\$4,372,663	\$20,701,203

BACKGROUND INFORMATION

The County uses the SAP Enterprise Resource and Planning (ERP) system countywide, as well as for other non-county entities, for financial operations and reporting. On April 19, 2016 (Item No. 13), the Board approved Agreement No. 16-166 with SAP Public Services, Inc. (SAP), for the implementation of the County’s [then] new enterprise financial management system and purchase of SAP software licenses, maintenance, and support, effective May 1, 2016, through April 30, 2021, for a total amount of \$4,090,737.

On October 1, 2017, the County implemented the ERP, which replaced the old Financial Accounting System, the TZ Treasury System, and several functions of the existing ePro system. Agreement No. 16-166 was subsequently amended on May 2, 2017 (Item No. 11), September 26, 2017 (Item No. 9), December 18, 2018 (Item No. 17), and December 15, 2020 (Item No. 20), increasing the total contract amount to \$11,171,457, to include the purchase of additional licenses and support fees and extending the annual software maintenance and support through December 31, 2025.

SAP’s platform was originally deployed and still operates today within the County’s owned, managed, and operated data center. The County is currently utilizing SAP’s on-premise ERP Central Component (ECC) based ERP and Financial Operations Platform for Public Sector. However, the County will be required to move its on-premise SAP ECC system to SAP’s S/4 HANA with RISE Private Cloud environment by 2027. Agreement No. 16-166, which is set to expire on December 31, 2025, will remain in effect to maintain the on-premise software during the County’s transition to the cloud.

The move to SAP’s S/4 HANA with RISE Private Cloud environment will allow the County to fully embrace all the functionality SAP provides, and as a result, save time on manual processes that are inefficient and time consuming. This will ensure that the County has a sustainable, secured, and well-maintained SAP ECC software platform that will be supported through at least 2040, and beyond, to allow for future improvements to better fit the County’s needs. As part of this effort, ATC will transform its customer service experience by providing all County SAP ECC software users a more user-friendly system.

The SAP Cloud Order Form together with the (1) Supplemental Terms and Conditions for Cloud Services, (2) Support Schedule for Cloud Services, (3) Service Level Agreement for Cloud Services, (4) Data Processing Agreement for Cloud Services, SAP Support and SAP Services, and (5) General Terms and Conditions, collectively form the Agreement and is SAP’s standard commercial contract for cloud subscription services. It includes terms that differ from the standard County contract and omits certain County standard contract terms. While the parties negotiated certain contract terms to County standard, SAP would not agree to all County standard terms. The non-standard and missing terms include the following:

**SAP Cloud Order Form Agreement with SAP Public Services, Inc. for
Software and Infrastructure Services
July 30, 2024**

1. SAP may assign the Agreement without notice to the County and without the County's approval.
 - The County standard contract requires that the County must approve any assignment of the contract.
 - Potential Impact: SAP 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.
2. The Agreement does not include certain standard County insurance requirements, including the waiver of subrogation.
 - 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: No waiver of subrogation may allow SAP's insurer to bring suit against the County, which could result in expenses that exceed the total Agreement amount.
3. SAP's maximum liability to the County or any other person or entity is limited to the annual subscription fees paid for the applicable Cloud Service associated with the damages for the prior 24 months without exclusions or exceptions, including SAP's indemnification obligations, and arising from SAP's gross negligence, willful misconduct and 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.
4. Payment terms are Net 45 with unpaid fees accruing interest at the maximum legal rate.
 - 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 45 days from the date of invoice may result in a material breach of the Agreement, which could allow SAP to terminate the Agreement and seek other legal remedies, including charging the County interest at the highest legal interest rate, which could exceed the Agreement amount.

ATC recommends approval of the Agreement, including non-standard terms, as support for the County's existing version of SAP ECC software will end by 2027. Implementing the latest version of the SAP ERP system will provide several benefits, including enhancing the overall end-user experience and increased functionality that will provide key analysis into the County's financial operations. Additionally, migrating to a cloud environment will increase the security of the County's financial data and provide advanced capabilities to streamline processes across County departments.

ATC is requesting a contract period of longer than five years due to the required lead time SAP needs to build the County's cloud environment.

**SAP Cloud Order Form Agreement with SAP Public Services, Inc. for
Software and Infrastructure Services
July 30, 2024**

PROCUREMENT

Purchasing supports the non-competitive procurement of the SAP S/4 HANA with RISE software as a service and infrastructure as a service subscription based on its proprietary nature. The SAP platform allows the County to migrate its current SAP ECC on-premise to the cloud, which serves as a valuable service to all County departments. Additionally, switching to a new ERP software would be costly and time-consuming at this time.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on June 28, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst, 386-9008) on July 1, 2024; Purchasing (Pete Mendoza, Director, 387-2074, and Jessica Barajas, Supervising Buyer, 387-2065) on June 21, 2024; Innovation and Technology (Lynn Fyhrlund, Chief Information Officer, 388-5501) on July 17, 2024; Finance (Garrett Baker, Administrative Analyst, 387-3077) on July 18, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on July 19, 2024.

**SAP Cloud Order Form Agreement with SAP Public Services, Inc. for
Software and Infrastructure Services
July 30, 2024**

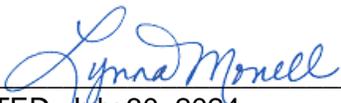
Record of Action of the Board of Supervisors
San Bernardino County

Public Comment: None

APPROVED

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: July 30, 2024



cc: ATC - Barcelona--Nuqui w/ agree
 Contractor c/o ATC w/ agree
 File w/ agree
JLL 07/31/2024