

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

**November 19, 2024**

**FROM**

**LYNN FYHRLUND, Chief Information Officer, Innovation and Technology Department**

**SUBJECT**

Ratify Acceptance of Non-Financial visionOS Software License Agreement with Apple, Inc. for Mobile Device Management

**RECOMMENDATION(S)**

1. Ratify action taken by the Chief Executive Officer on September 19, 2024, to electronically accept the non-financial visionOS Software License **Agreement No. 24-1143**, including non-standard terms, with Apple, Inc. for compatibility with Apple, Inc. branded electronic devices, automatically renewing for successive one-year periods until terminated by either party.
2. Authorize the Chief Information Officer, Assistant Chief Information Officer, or IT Division Chief to electronically accept updates to the visionOS Software License Agreement, subject to review by County Counsel, provided that such updated terms do not substantively modify the terms of the visionOS Software License Agreement.
3. Direct the Chief Information Officer, Assistant Chief Information Officer, or IT Division Chief to transmit any non-substantive updated terms that are electronically accepted to the Clerk of the Board of Supervisors within 30 days of acceptance or execution.

(Presenter: Lynn Fyhrlund, Chief Information Officer, 388-5501)

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

**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 visionOS Software License Agreement (SLA) with Apple, Inc. (Apple) is non-financial in nature and does not commit the County to make any purchases. If future purchases are made under the SLA, 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**

Apple Business Manager (ABM) is a platform for Apple device deployment, which integrates into the County's Mobile Device Management (MDM) solution for the centralized management of County owned devices across departments. This platform enables ITD to fully manage iPhone Operating System (iOS) devices, such as iPhones and iPads, remotely.

On June 14, 2022 (Item No. 35), the Board approved the latest ABM Agreement No. 22-403, with Apple for MDM, including non-standard terms, for software that enables ITD to enroll, manage content, and support Apple-branded devices operating in an MDM environment within

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the County. ABM Agreement No. 22-403 was accepted electronically and automatically renews for successive one-year periods until terminated by either party. The Board also designated the Chief Information Officer, Assistant Chief Information Officer, or IT Division Chief with authorization to electronically accept updates to the terms of ABM Agreement No. 22-403 and any applicable licenses, subject to review by County Counsel, provided that such updated terms and applicable licenses do not substantively modify the terms of Agreement No. 22-403 accepted by the County.

On December 6, 2022 (Item No. 28), the Board retroactively approved Agreement No. 22-1228 (iOS and iPadOS SLA), Agreement No. 22-1229 (macOS Ventura SLA), and Agreement No. 22-1230 (tvOS SLA) (all of the aforementioned Agreements, including Agreement No. 22-403, hereafter are collectively referred to as the ABM Agreements), with Apple for MDM, including non-standard terms, for software enabling ITD to enroll, manage content, and support Apple-branded devices operating in an MDM environment within the County. The Agreements were accepted electronically and automatically renew for successive one-year periods until terminated by either party. The Board designated the Chief Information Officer, Assistant Chief Information Officer, or IT Division Chief with authorization to electronically accept updates to the terms of the ABM Agreements and any applicable licenses, subject to review by County Counsel, provided that such updated terms and applicable licenses do not substantively modify the terms of the original agreement accepted by the County. The Board also authorized the Chief Executive Officer, upon consultation with County Counsel, to approve agreements, as it relates to licensing agreements with Apple, for software that enables ITD to enroll, manage content, and support Apple-branded devices operating in an MDM environment within the County, subject to ratification by the Board of Supervisors at the next available Board meeting.

Item No. 28 also authorized the Chief Information Officer, upon consultation with County Counsel, to approve agreements with non-standard language as identified in County Policy 11-05, Section B., as it relates to licensing agreements with Apple for software that enables ITD to enroll, manage content, and support Apple-branded devices operating in an MDM environment within the County, subject to ratification by the Board at the next available Board meeting date.

On June 6, 2023, the Chief Executive Officer (CEO), upon consultation with County Counsel, approved Agreement No. 23-820 (Volume Content Terms) and Agreement No. 23-821 (Apple Media Services Terms and Conditions), including non-standard terms, with Apple for compatibility with Apple-branded electronic devices. The Agreements were presented to the Board on July 25, 2023 (Item No. 33), ratifying the action taken by the CEO. Apple also informed ITD that future product-specific terms and updates associated with the ABM Agreements and ABM account will be required with a possibly short notice of two weeks or less and may include product specific agreement or terms for software that ITD does not currently utilize. ITD is required to electronically accept all product-specific agreements or terms that are associated with the ABM platform to continue accessing the ABM account.

On September 10, 2024, ITD was notified of the requirement to electronically accept the visionOS SLA listed in Recommendation No. 1 in the ABM portal and that ITD would no longer be able to enroll devices or deploy new apps until an administrator electronically accepted it. ITD was not required to accept the visionOS SLA when the ABM account was initially set up. On September 19, 2024, the visionOS SLA in Recommendation No. 1 was electronically accepted pursuant to the Board's authorization. This Board date is the earliest ITD could bring the visionOS to the Board after the required administrative, fiscal, and legal reviews.

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The visionOS SLA is Apple's standard commercial agreement, which includes terms that differ from the standard County contract and omit certain County standard contract terms. The visionOS SLA is a non-negotiable clickwrap agreement accepted by click-to-accept. The non-standard and missing terms include the following:

1. Apple may assign the visionOS SLA 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: Apple could assign the visionOS SLA 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 visionOS SLA.
2. The visionOS SLA does not require Apple to indemnify the County, as required by County Policies 11-05 and 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: Apple is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from Apple's negligent or intentional acts and intellectual property infringement. If the County is sued for any claim, including intellectual property infringement based on its use of Apple's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total visionOS SLA amount.
3. The visionOS SLA does not require Apple 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.
  - Potential Impact: The County has no assurance that Apple will be financially responsible for claims that may arise under the visionOS SLA, which could result in expenses to the County that exceed the total visionOS SLA amount.
4. Apple's maximum liability to the County is limited to \$250, without any limitations.
  - The County standard contract does not include a limitation of liability.
  - Potential Impact: Claims could exceed the liability cap and the visionOS SLA amount leaving the County financially liable for the excess.
5. Apple provides the services and/or products "AS IS" and disclaims all warranties of any kind.
  - County Policy 11-05 requires a contractor to fully warrant its services and products.
  - Potential Impact: The County's use of the services and/or products is solely at its own risk.

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ITD recommends ratification of the Chief Executive Officer's electronic acceptance of the visionOS SLA, including non-standard terms, to allow the deployment and management of County owned Apple-branded devices. Approval of Recommendation No. 2 will authorize the Chief Information Officer, Assistant Chief Information Officer, or IT Division Chief to electronically accept future updates to the visionOS SLA and any applicable licenses, subject to review by County Counsel, provided that such updated terms do not substantively modify the terms of the visionOS SLA. This enables ITD to enroll, manage content and support Apple-branded devices operating in an MDM environment within the County, which will allow assigned staff access to download, install, and accept the software licensing terms in a timely manner to avoid disruptions to County operations.

**PROCUREMENT**

Purchasing supports the non-competitive procurement of the visionOS SLA with Apple due to its proprietary nature. Apple is the exclusive provider of the ABM device management software designed specifically for an MDM environment developed for Apple-branded devices. The visionOS SLA, including non-standard terms, will be used to accompany future purchases to be approved as needed in accordance with County Policy 11-04 regarding the procurement of goods, supplies, equipment and services

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on October 15, 2024; Purchasing (Monica Centeno, Buyer II, 386-8046) on October 16, 2024; Risk Management (Loretta Acuna, Staff Analyst II, 386-9039) on October 16, 2024; Finance (Iliana Rodriguez, Administrative Analyst, 387-4205) on October 30, 2024; County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on November 1, 2024.

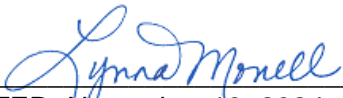
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Record of Action of the Board of Supervisors  
San Bernardino County

**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: November 19, 2024



cc: IT - Thomas w/agree  
Contractor - c/o IT w/agree  
File - w/agree  
CCM 11/27/2024