

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

March 29, 2022

**FROM**

**BOB DUTTON, Assessor-Recorder-County Clerk**

**SUBJECT**

Non-Financial Agreement with PDFTron Systems Inc. for PDF.js Express Software Licensing Services

**RECOMMENDATION(S)**

1. Approve a non-financial **License Agreement No. 22-238** with PDFTron Systems Inc., including non-standard terms, to be accepted electronically, for future purchases of PDF.js Express software licenses effective upon acceptance of software license agreement, automatically renewing until terminated by either party.
2. Authorize the Assistant Assessor or Departmental Information Systems Administrator to electronically accept the License Agreement in Recommendation No. 1 related to the use of PDFTron Systems Inc. software licensing services.

(Presenter: Bob Dutton, Assessor-Recorder-County Clerk, 382-3254)

**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 PDFTron Systems Inc. (PDFTron) License Agreement (Agreement) is non-financial in nature and does not commit the County to make any purchases. When future purchases are made under the 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**

PDFTron's PDF.js Express software is a file rendering service that allows users to annotate, form-fill, and sign PDF documents. This service is necessary for the Assessor Information Management System (AIMS) Project because some modules in the new AIMS system require the use of fillable PDF forms to capture data from various processes as it passes through workflow from one Assessor staffing unit to another.

The software will be used in conjunction with the system integration services that are currently being provided by CGI Technologies and Solutions Inc. (CGI T&S). CGI T&S tested and confirmed this software's system compatibility with AIMS and recommended the application of this software to provide needed functionality within the new system. Approval of this Agreement, including non-standard terms, would authorize future purchases and downloads of

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the PDF.js Express software, subject to County purchasing policies. Approval of Recommendation No. 2 would authorize the Assistant Assessor or Departmental Information Systems Administrator to electronically accept the Agreement for PDF.js Express software licenses and services for an indefinite period of time as it will automatically renew until terminated by either party.

The Licensing Agreement is PDFTron's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. The agreement is a non-negotiable clickwrap agreement, accepted electronically by click-to-accept. Since the Agreement is governed by and interpreted under the substantive laws of the Province of British Columbia, Canada, ARC hired outside counsel competent to advise on a contract governed by these laws. The non-standard and missing terms include the following:

1. Governing law and venue are British Columbia, Canada.
  - The County standard contract requires California governing law and venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
  - Potential Impact: The validity, construction, and performance of the Licensing Agreement and any dispute between the parties will be exclusively governed in accordance with the substantive laws of the Province of British Columbia, Canada. Any litigation, action or proceeding relating the Licensing Agreement must be instituted in the Supreme Court of British Columbia, Vancouver Registry. If a dispute should arise, the County would have to retain British Columbia counsel to represent the County's interests and would have to participate in proceedings located in British Columbia. If a dispute arises, it would be resolved in accordance with the laws of British Columbia related to contract formation, enforcement, and remedies. Having a venue in British Columbia, Canada may result in additional expenses that exceed the amount of the contract.
2. PDFTron may make changes to the Agreement at any time with notice, and the County is bound to the modified terms by its continued use of the software.
  - The County standard contract requires that any changes to the contract be reduced to writing, executed, and attached to the original Contract and approved by the person(s) authorized to do so on behalf of the Contractor and County.
  - Potential Impact: The County could be agreeing to new terms without review by competent counsel to advise of the effects of the modified terms, and without the approval of the new terms by the Board.
3. The Licensing Agreement may be assigned by PDFTron at its sole discretion.
  - The County standard contract requires approval of any assignment.
  - Potential Impact: The County will not have the right to prior notification or approval of the assignment. PDFTron could assign the contract 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.
4. The Licensing Agreement is silent on attorney's fees and costs.
  - The County standard contract provides that neither party is responsible to pay for the other party's attorney's fees and costs, except for indemnity obligations.

- Potential Impact: Because the governing jurisdiction and venue are British Columbia, Canada, the parties would be subject to British Columbia's substantive laws related to contracts and to British Columbia laws and rules of court regarding costs and fees that may be awarded in the course of litigation. Under such laws, in the absence of explicit contract language, the assumption is that each party will carry their own costs in the event that there is a dispute. However, if that dispute goes to Court, a successful party is entitled to reimbursement of a portion of their costs and fees from the unsuccessful party. The amount of costs that can be awarded depends on the amount of money that is in dispute, the amount of legal difficulty in resolving the dispute, and the amount of time spent in Court. In this system, the successful party, at best, recovers a portion of their legal costs, they are never made whole.
5. The Licensing Agreement does not require PDFTron to indemnify the County.
- County Policy 11-07 requires all County contracts to include indemnification of the County. The County standard contract indemnity provision requires the Contractor to indemnify, defend, and hold the 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: PDFTron is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from PDFTron'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 PDFTron's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total contract amount. The County cannot contractually claim compensation from PDFTron for third party claims related to the services provided under the Licensing Agreement.
6. The County agrees to indemnify PDFTron for specified third party claims.
- The County standard contract does not include any indemnification by the County of a contractor.
  - Potential Impact: The County may be contractually obligated to indemnify PDFTron from certain third-party claims. This may result in the County having financial liability for costs, losses, or other expenses, including reasonable legal fees that are claimed or ordered against PDFTron. The common law and statutes of British Columbia do not currently exclude the indemnification clauses that are found in the Licensing Agreement. By agreeing to indemnify PDFTron, 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 PDFTron without such limitations and the County would be responsible to defend and reimburse PDFTron for costs, expenses, and damages, which could exceed the total contract amount.

7. The Licensing Agreement does not require PDFTron to meet the County's insurance standards required by County Policy 11-07.
  - The County standard contract requires contractors to carry appropriate insurance standards as required by County Policy 11-07.
  - Potential Impact: The County has no assurance that PDFTron 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
8. PDFTron's maximum aggregate liability to the County, including any persons whose claims are based on rights claimed by the County, with respect to any and all claims, at any and all times, arising from or related to the software, in contract, tort (including negligence or breach of any duty), or otherwise, may not exceed the amount the County has paid for the licensed software for the 12-month period prior to the date the claim arises.
  - The County standard contract does not include a limitation of liability.
  - Potential Impact: The County will be financially liable for any loss or claim arising from the Licensing Agreement. Claims could exceed the liability cap and the contract amount leaving the County financially liable for the excess. In addition, the County's liability under the contract is not similarly limited.
9. The contract term is automatically renewing for the period of the original terms, i.e. monthly or annually.
  - County Policy 11-06SP does not permit indefinite term or automatically renewing contracts unless approved by the Board.
  - Potential Impact: There is no end term to the contract and the County is indefinitely bound to the terms and conditions of the contract.
10. The County may terminate the contract for convenience at any time without advance notice to PDFTron, but all fees are non-refundable.
  - The County standard contract gives the County 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: There is no termination for convenience without penalty. Upon any termination by either party regardless of cause, the County will not receive a refund of any fees paid.
11. The Licensing Agreement disclaims all warranties, conditions, representations or terms of any kind, including implied warranties or conditions of merchantability, integration, satisfactory quality, design, durability, fitness for particular purpose, title, quiet enjoyment, quiet possession and non-infringement of third-party rights. The software is provided "as is."
  - The County's standard contract requires the contractor to fully warrant its services and products.
  - Potential Impact: The County cannot claim under contract for any warranty. The County may only rely upon such warranties implied by law that cannot be validly waived. The common law and statutes of British Columbia do not imply any warranties to, or prevent the waiver of warranties in, licensing agreements or to

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any agreements between commercial entities. The County's use of the software is at its own risk.

The recommended Agreement, including non-standard terms, will allow ARC to operate in a fiscally-responsible and business-like manner, and improve County government operations by enabling ARC to receive PDF.js Express software licenses, which will provide an additional tool for transitioning the Assessor's existing Property Information Management System (PIMS) to a current technology platform provided by AIMS.

**PROCUREMENT**

PDFTron's Agreement, including non-standard terms, will be used to accompany future purchases to be approved as necessary, in accordance with County Policy 11-04, Procurement of Goods, Supplies, Equipment, and Services.

Additionally, County Policy 11-05 requires departments to obtain Board approval for procurement of goods and services with non-standard terms and conditions.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Kaleigh Ragon, Research Attorney, 387-5455) on February 28, 2022; Innovation and Technology Department (Larry Ainsworth, Chief Information Officer, 388-5501) on March 3, 2022; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on March 1, 2022; Risk Management (Victor Tordesillas, Director, 386-8621) on February 28, 2022; Finance (Carl Lofton, Finance Analyst, 387-5404) on March 10, 2022; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on March 13, 2022.

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Record of Action of the Board of Supervisors  
San Bernardino County

**APPROVED (CONSENT CALENDAR)**

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

Lynna Monell, CLERK OF THE BOARD

BY   
DATED: March 29, 2022



cc: ARC - Gaeta w/agree  
Contractor - C/O ARC w/agree  
File - w/agree  
CCM 03/31/2022