

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

November 5, 2024

FROM

CHRIS WILHITE, Assessor-Recorder-County Clerk

SUBJECT

License and Services Agreement with J.D. Power for Subscription Licenses

RECOMMENDATION(S)

Approve a License and Services **Agreement No. 24-1046** with J.D. Power, including non-standard terms, for Manufactured Homes CONNECT licenses, in an amount not to exceed \$1,487.50, for the term of December 1, 2024, through November 30, 2025.
(Presenter: Chris Wilhite, Assessor-Recorder-County Clerk, 382-3208)

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 total cost for the one-year subscription, for seven Manufactured Homes CONNECT licenses, is \$1,487.50. The cost of the licenses will be billed in 2024-25. Adequate appropriation and revenue have been included in the Assessor-Recorder-County Clerk's (ARC) 2024-25 budget (3111001000).

BACKGROUND INFORMATION

The Assessor Division of ARC is responsible for establishing a value for all locally taxable property including residential, commercial, business and personal property, and assessment appeals. The manufactured homes valuation information provided by J.D. Power's Manufactured Homes CONNECT is used by ARC appraisers to prepare appraisals and defend ARC valuations against appeals initiated by property owners.

Manufactured homes not on a permanent foundation are considered personal property and are valued using the cost approach. J.D. Power Manufactured Homes CONNECT provides a license that allows appraisal staff to utilize the online manufactured home value guide to create estimates of manufactured homes using the cost approach.

J.D. Power License and Services Agreement (Agreement) governs the County's use of J.D. Power's subscription licenses. The Agreement is J.D. Power's standard contract, which includes terms that differ from the standard County Contract and omits County standard contract terms. The non-standard and missing terms include the following:

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1. J.D. Power is not required to defend, indemnify or hold the County harmless for claims arising from J.D. Power's negligent or intentional acts and intellectual property infringement.
 - 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. The County standard contract general 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.
 - Potential Impact: If the County is sued for any claim, including intellectual property infringement based on its use of J.D. Power's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount.
2. J.D. Power disclaims the warranty of non-infringement and provides no indemnification for claims made against the County based on J.D. Power's performance under the Agreement.
 - There is no warranty requirement in the County standard contract. 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: The disclaimer of a warranty of non-infringement, coupled with the lack of indemnity for intellectual property infringement means that, should the County be sued for intellectual property infringement based on its use of J.D. Power's software or services, the County will be liable for the costs of defense and damages. While infringement claims against end users are rare, they have been known to occur, and the County could be responsible for defense costs and damages, which could exceed the total Agreement amount.
3. The Agreement does not include all standard County insurance requirements.
 - 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: The County has no assurance that J.D. Power 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 Agreement amount.
4. The Agreement contains a Limitation of liability, which includes claims surrounding violations of law by J.D. Power.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: J.D. Power caps its liability to the County for claims arising under the Agreement at the aggregate total fees paid by the County to J.D. Power under the invoice for licensed products. The maximum liability cap does not apply to liability arising from J.D. Power's indemnity obligations, gross negligence, or willful misconduct. However, the limitation of liability does not exclude violations of law by J.D. Power. Claims could exceed the liability cap and the Agreement amount, leaving the County financially liable for the excess. In addition, the County's liability under the Agreement is not similarly limited.

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5. There is no termination for convenience clause.
 - 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: The lack of a termination for convenience clause could result in payment liability where no funds are available due to lack of allocation or loss of funding.

Approval of the Agreement with J.D. Power, including non-standard terms, will allow ARC to improve County government operations and operate in a fiscally-responsible manner by providing access to vital appraisal market data for manufactured home properties.

PROCUREMENT

J.D Power is a nationally recognized consumer data and analytics company that provides detailed and objective studies on a variety of industries, particularly the real estate industry. Its online system provides information about manufactured home values, pricing, and information used by appraisers and real estate professionals. J.D Power is the only vendor that offers this scope of data and analytics.

The Purchasing Department recognizes the specialized credentials and expertise of J.D. Power and supports the non-competitive procurement of these subscription licenses from J.D. Power.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Kenneth Brown, Deputy County Counsel, 387-5455) on October 10, 2024; Purchasing (Ariel Gill, Supervising Buyer, 387-2070) on October 15, 2024; Risk Management (Loretta Acuña, Staff Analyst II, 909-386-9039) on October 10, 2024; Innovation and Technology (Robert Pittman, Chief Information Security Officer, 388-5510) on October 15, 2024; Finance (Penelope Chang, Administrative Analyst, 387-4886) on October 17, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Office, 387-5423) on October 21, 2024.

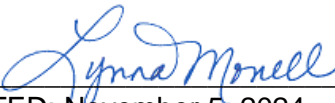
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY  _____
DATED: November 5, 2024



cc: ARC - Duran w/agree
Contractor - c/o ARC w/agree
File - w/agree
CCM 11/6/2024