

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

March 28, 2023

FROM

JAKE CORDOVA, Interim Chief Information Officer, Innovation and Technology Department

SUBJECT

Non-Financial End User License Agreement with Elixir Technologies Corporation for Graphic Design Software

RECOMMENDATION(S)

Approve non-financial End User License **Agreement No. 23-238**, including non-standard terms, with Elixir Technologies Corporation, for graphic design software, in purchase amounts as authorized by County Policy, for the period beginning March 28, 2023, through March 27, 2024, with four optional one-year renewal terms.

(Presenter: Jake Cordova, Interim 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 End User License Agreement (EULA) with Elixir Technologies Corporation (Elixir) is non-financial in nature and does not commit the County to make any purchases. If future purchases are made under the EULA, 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's Business Solutions Development Division (BSD) assists other County departments with the design and development of forms and public notices used to conduct County business. Elixir DesignPro Tools is a suite of graphics software tools that are used to design and develop forms, notifications, and publications in the enterprise server environment. The software allows for the efficient and effective design of form templates that can be populated with specific information that is stored in various databases and servers. BSD uses the software to develop the annual property tax bills for the Auditor-Controller/Treasurer/Tax Collector, property owner assessment notifications for the Assessor/Recorder/County Clerk, and various other publications for use by other County departments that are printed by ITD's enterprise printing services for County business purposes.

The EULA is Elixir's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. While the parties

**Non-Financial End User License Agreement with Elixir Technologies
Corporation for Graphic Design Software
March 28, 2023**

negotiated certain contract terms to County standards, Elixir would not agree to all County standard terms. The non-standard and missing terms include the following:

1. The EULA 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 Elixir's insurer to bring suit against the County, which could result in expenses that exceed the total EULA amount.
2. The maximum liability of Elixir is limited to the amount paid or payable by the County to Elixir for the twelve months prior to the event giving rise to the claim without excluding indemnification obligations, gross negligence, willful misconduct or violations of law.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the EULA amount leaving the County financially liable for the excess.
3. Payment terms are Net 30 with a late payment interest penalty of 1.5% per month for all payments not received within 45 days of the County's receipt of invoice. The County will also pay all costs of collection, including attorneys' fees.
 - 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 with 45 days will result in a material breach of the contract, which would allow Elixir to terminate the EULA and seek other legal remedies, including charging the County interest at a rate of 1.5% monthly and recovering costs of collection, which would exceed the EULA amount.
4. There is no termination for convenience.
 - 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: Upon any termination by either party regardless of cause, the County is required to continue to pay all fees until the software is returned, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.

ITD recommends approval of the EULA, including non-standard terms, for continued utilization of Elixir DesignPro Tools software for the efficient design, development and printing of County forms, notifications, and publications within ITD's enterprise server environment.

PROCUREMENT

The EULA, including the 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.

**Non-Financial End User License Agreement with Elixir Technologies
Corporation for Graphic Design Software
March 28, 2023**

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on February 21, 2023; Purchasing (Tevan Stremel, Buyer III, 387-2098) on February 21, 2023; Risk Management (Victor Tordesillas, Director, 386-8623) on February 21, 2023; Finance (Ivan Ramirez, Administrative Analyst, 387-4020) on February 28, 2023; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on March 13, 2023.

**Non-Financial End User License Agreement with Elixir Technologies
Corporation for Graphic Design Software
March 28, 2023**

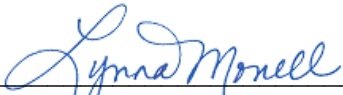
Record of Action of the Board of Supervisors
San Bernardino County

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: March 28, 2023



cc: IT - Onyango w/agree
Contractor - C/O IT w/agree
File - w/agree

CCM 03/31/2023