

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

**June 25, 2024**

**FROM**

**TOM BUNTON, County Counsel**

**SUBJECT**

Agreement with CeriFi, LLC for Legal Education Software

**RECOMMENDATION(S)**

1. Approve **Agreement No. 24-575** with CeriFi, LLC, including non-standard terms, for a subscription to legal education software in the amount of \$5,992 for the retroactive contract period of March 1, 2024 through February 1, 2025, automatically renewing annually unless canceled prior to renewal.
2. Authorize the County Counsel to electronically accept the Agreement with CeriFi, LLC and any updates to the Agreement provided that such updated terms do not substantively modify the terms of the original agreement, subject to review by County Counsel.
3. Direct the County Counsel to transmit printed copies of any non-substantive updated terms to the Clerk of the Board of Supervisors within 30 days of acceptance.

(Presenter: Tom Bunton, County Counsel, 387-4617)

**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 agreement with CeriFi, LLC (CeriFi) will not exceed the amount of \$5,992. Sufficient appropriation is included in the 2023-24 County Counsel (Counsel) budget (1710001000) and will be included in future recommended budgets, as necessary.

**BACKGROUND INFORMATION**

The CeriFi software subscription provides on-demand programs for live webcasts and study materials needed to meet training goals and required continuing education credits for attorneys and paralegals. The recommended action will allow the department to save costs through unlimited access to educational materials at a monthly rate.

Counsel uses Thomson Reuters/West Publishing Corporation WestLaw Edge (WestLaw Edge) online services as a cost-effective way for staff to conduct legal research and obtain educational credit. West LegalEdcenter, a component of the WestLaw Edge platform, provides continuing legal education solutions and services to thousands of legal professionals, maintaining an expansive library of on-demand educational content and knowledge that spans the legal world and manages compliance with legal education requirements.

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On November 30, 2022, CeriFi acquired West LegalEdcenter from Thomson Reuters. In February 2024, Counsel was notified the transition would become effective March 1, 2024, and has since been working with CeriFi to attain accurate pricing and terms. On May 15, 2024, CeriFi sent a past due notice for the March 1, 2024 monthly payment and an invoice for the remaining annual period with new agreement terms identifying CeriFi as the contracting party. This is the soonest meeting at which this agreement could be submitted, resulting in the need for retroactive approval.

The agreement is CeriFi's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. This is a non-negotiable online clickwrap agreement. The non-standard and missing terms include the following:

1. Governing law is the State of Georgia.
  - The County standard contract requires California governing law.
  - Potential Impact: The Agreement will be interpreted under Georgia State law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on Georgia law, which may result in fees that exceed the total Agreement amount.
2. CeriFi may change the Agreement terms without notice at any time.
  - County Policy 11-06 requires that any changes to the contract to 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 anyone, including County Counsel, and without approval of the new terms by the Board. County Counsel cannot advise on whether and to what extent Georgia law may affect the enforceability of unilateral changes to the terms.
3. CeriFi 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: CeriFi 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. County Counsel cannot advise on whether and to what extent Georgia law may permit or restrict a party's right to assign without an express provision in the Agreement.
4. There is no provision in the Agreement addressing each party's responsibility for paying attorneys' fees.
  - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
  - Potential Impact: County Counsel cannot advise on, whether and to what extent, Georgia law may affect a party's requirement to pay the prevailing party's attorneys' fees and costs in a legal action where no specific provision is provided in the Agreement.

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5. The Agreement does not require CeriFi 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: CeriFi is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from CeriFi'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 CeriFi's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount. County Counsel cannot advise on whether and to what extent Georgia law may allow the County to require CeriFi to defend or indemnify it absent an express provision in the Agreement.
6. The County is required to indemnify CeriFi against claims arising from the County's use of the website, and CeriFi may take over the defense of the claim at County's expense.
  - The County standard contract does not include any indemnification or defense by the County of a contractor.
  - Potential Impact: By agreeing to indemnify CeriFi, 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 CeriFi without such limitations and the County could be responsible to defend and reimburse CeriFi for costs, expenses, and damages, which could exceed the total Agreement amount. County Counsel cannot advise on, whether and to what extent, Georgia law may limit or expand this Agreement term.
7. The Agreement does not require CeriFi 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 CeriFi will be financially responsible for claims that may arise under the Agreement, which could result in expenses to the County that exceed the total Agreement amount.
8. Venue for disputes arising under the Agreement is in Fulton County, Georgia.
  - County Policy 11-05 requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
  - Potential Impact: Having a venue in Fulton County, Georgia may result in additional expenses that exceed the amount of the Agreement.
9. CeriFi provides the services and/or products "AS IS" and "AS AVAILABLE" and disclaims all warranties of any kind.
  - County Policy 11-05 requires a contractor to fully warrant its services and products.

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- Potential Impact: The County's use of the services and/or products is solely at its own risk. County Counsel cannot advise on, whether and to what extent, Georgia law may limit or expand the disclaimers of warranty to the extent prohibited by applicable law.

County Counsel recommends approval of the agreement with CeriFi, including the non-standard terms, to allow Counsel to reduce the costs to meet training goals and required continuing education credits for attorneys and paralegals and contribute to the County's goal to operate in a fiscally-responsible and business-like manner.

**PROCUREMENT**

Purchasing concurs with the non-competitive procurement based on assignment of an existing service to a new service provider for subscription to legal education software.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on May 29, 2024; Purchasing (Jessica Barajas, Supervising Buyer, 387-2065) on June 3, 2024; Innovation and Technology (Lynn Fyhrlund, Chief Information Officer, 388-5501) on June 10, 2024; Risk Management (Greg Ustaszewski, Staff Analyst II, 386-9008) on June 10, 2024; Finance (Carl Lofton, Administrative Analyst, 387-5404) on June 5, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on June 10, 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: June 25, 2024



cc:    Counsel - Magana w/agree  
      Contractor - c/o Counsel w/agree  
      File - w/agree  
CCM  07/11/2024