

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

December 19, 2023

**FROM**

**THOMAS W. SONE, Public Defender**

**SUBJECT**

Agreement with West Publishing Corporation for Online Legal Research Services

**RECOMMENDATION(S)**

Approve **Agreement No. 23-1324** with West Publishing Corporation, including non-standard terms, for online legal research services in the amount of \$320,778 for the period beginning on the date that West Publishing Corporation processes the order and continuing for 60 months. (Presenter: Thomas W. Sone, Public Defender, 382-3950)

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

**Operate in a Fiscally-Responsible and Business-Like Manner.**

**Provide for the Safety, Health and Social Service Needs of County Residents.**

**FINANCIAL IMPACT**

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost). The total cost for this five-year agreement is \$320,778 and will be funded with the Public Defender's (Department) existing allocation of Net County Cost. Sufficient appropriation and revenue have been included in the Department's 2023-24 budget and will be included in future recommended budgets.

**BACKGROUND INFORMATION**

The Department utilizes online legal research services extensively as a cost-effective way for staff to conduct in-depth research and analysis. Performing legal research online allows the Department to reduce costs associated with the purchase of printed materials; access newly updated materials immediately; and perform global searches to quickly access relevant information. West Publishing Corporation (WPC) is providing the products and services and may act as an agent on behalf of Thomson Reuters Enterprise Centre GmbH (Thomson Reuters) with respect to billing and collection.

The recommended agreement allows the Department to access Westlaw Edge, which includes primary and secondary sources, enhanced search capabilities, investigative resources and other needed legal research materials. Additionally, West Publishing will provide staff training and support, as needed, throughout the contract term.

The agreement, including Thomson Reuters General Terms and Conditions and Westlaw Schedule A Plan 2 Westlaw PRO for State and Local Government Agencies and Courts – Government Service, is WPC's standard commercial contract, which includes terms that differ

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from the standard County contract and omits certain County standard contract terms. WPC is unwilling to negotiate these terms. The non-standard and missing terms include the following:

1. WPC 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: WPC 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.
2. WPC may change the agreement terms at any time by notice, including posting on the website.
  - 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 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 of Supervisors (Board).
3. The County is required to indemnify WPC against any third party claim or regulatory fine or penalty based on County's intellectual property infringement by County's data, County's breach of the agreement, County's violation of applicable law, WPC's compliance with County's instructions, and claims from any person accessing or receiving the benefit of any part of our services through the County.
  - The County standard contract does not include any indemnification or defense by the County of a contractor.
  - Potential Impact: By agreeing to indemnify WPC, 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 WPC without such limitations and the County could be responsible to defend and reimburse WPC for costs, expenses, and damages, which could exceed the total agreement amount.
4. The agreement does not require WPC 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 County policy and in the County standard contract.
  - Potential Impact: The County has no assurance that WPC 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.
5. WPC's maximum liability to the County is limited to the amount payable in the prior 12 months for the service that is the subject of the claim, excluding (i) fraud, fraudulent misrepresentation, willful misconduct, negligence causing death or personal injury; infringement of the County's intellectual property rights, and WPC's indemnification obligations.

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- The County standard contract does not include a limitation of liability.
  - Potential Impact: Claims could exceed the liability cap and the agreement amount leaving the County financially liable for the excess.
6. Payment terms are Net 30 with a with late payment fee of \$25.
- 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 within 30 days may result in a material breach of the agreement, which could allow WPC to terminate the agreement and seek other legal remedies, including charging the County a \$25 fee, which could exceed the agreement amount.
7. The term of the agreement is automatically renewing unless terminated by giving written notice at least 30 days prior to the end of the current term.
- County Policies 11-05 and 11-06SP1 do not permit indefinite term or automatically renewing contracts except for end user license agreements, software/hardware licenses and subscriptions, and master service agreements or unless approved by the Board.
  - Potential Impact: There is no end term to the agreement and the County is indefinitely bound to the terms and conditions of the agreement until the County gives written notice at least 30 days prior to the end of the current term.

The Department recommends approval of the agreement, including the non-standard terms, to allow the Department cost-effective and timely access to online legal research services.

**PROCUREMENT**

The Department conducted an informal solicitation by reaching out to vendors that provide subscriptions to online legal research services. A team of staff members, including attorneys and investigators, evaluated each vendor's service based on the following criteria: relevant search results, quality of information, ease of use, and cost. The evaluation team determined that WPC best meets the Department's requirements.

**REVIEW BY OTHERS**

This item has been reviewed by Purchasing (Jessica Barajas, Supervising Buyer, 387-2065) on November 16, 2023; County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on November 15, 2023; Finance (Kathleen Gonzalez, Administrative Analyst, 387-5412) on November 30, 2023; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on December 1, 2023.

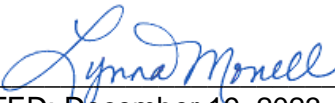
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Record of Action of the Board of Supervisors  
San Bernardino County

**APPROVED (CONSENT CALENDAR)**

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

Lynna Monell, CLERK OF THE BOARD

BY  \_\_\_\_\_  
DATED: December 19, 2023



cc: Public Defender - Lovelace w/agree  
Contractor - c/o Public Defender w/agree  
File - w/agree  
CCM 12/27/2023