

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

June 28, 2022

FROM

BRENDON BIGGS, Director, Department of Public Works – Transportation

SUBJECT

Agreements with Citrix Systems, Inc. for Virtual Apps and Desktop Advanced Edition

RECOMMENDATION(S)

1. Approve License **Agreement No. 22-564** with Citrix Systems, Inc., for Citrix Virtual Apps and Desktop Advanced Edition for critical applications, which includes non-standard terms, in the not-to-exceed amount of \$16,309.13 for the renewal period of July 30, 2022 through July 29, 2023.
2. Approve End User Services **Agreement No. 22-565** with Citrix Systems, Inc., for Citrix Virtual Apps and Desktop Advanced Edition for critical applications, which includes non-standard terms, for the renewal period of July 30, 2022 through July 29, 2023.

(Presenter: Brendon Biggs, Director, 387-7906)

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 Discretionary General Funding (Net County Cost). The Department of Public Works – Transportation (Department) is funded by Gas Tax, fee revenue, and other local, state, and federal funding. The License Agreement and End User Services Agreement with Citrix Systems, Inc. (Citrix) is for the Citrix Virtual Apps and Desktops software renewal for a not-to-exceed amount of \$16,309.13 for the one-year term from July 30, 2022 to July 29, 2023. Sufficient appropriation is included in the Department's 2022-23 Recommended Road Operations Budget (6650002000 – 89H14716).

BACKGROUND INFORMATION

The Department utilizes Citrix Virtual Apps and Desktop Advanced Edition for critical applications, including its accounting and financial application (WinCAMS), Microsoft Office Suite, Adobe Acrobat PDF reader, and CompuWeigh for staff located at multiple locations countywide.

The existing license for Citrix Virtual Apps and Desktops Advanced Edition Software expires July 29, 2022. The Department is now seeking a new term of licenses for these virtual applications and software. Citrix is a virtualization technology company that provides server, application, and desktop virtualization, networking, software as a service (SaaS), and cloud technologies. The Citrix License Agreement and End User Services Agreement are Citrix's standard commercial agreement and includes terms that differ from the standard County

**Agreements with Citrix Systems, Inc. for Virtual Apps and Desktop
Advanced Edition
June 28, 2022**

contract and omit certain County standard language. The non-standard and missing terms include the following:

1. Governing Law. The governing law is the State of Florida.
 - The County standard contract requires California governing law.
 - Potential Impact: The contract will be interpreted under Florida law. Any questions, issues or claims arising under this contract will require the County to hire outside counsel competent to advise on Florida law, which may result in fees that exceed the total contract amount.
2. Citrix may assign the contract to a successor in interest, or pursuant to a merger or a sale or transfer of all or substantially all of its assets, to any affiliate or third party acquiring or otherwise assuming part of the business of Citrix or any of its affiliates without notice to the County.
 - The County must approve any assignment of the contract.
 - Potential Impact: Citrix may assign the contract to a third party or business with which the County is legally prohibited from doing business with due to issues of Federal debarment or suspension and conflict of interest, without the County's knowledge.
3. The contract is silent on 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, Florida 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 contract.
4. The contract does not require Citrix to meet the County's insurance standards.
 - 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 contract does not include County standard insurance requirements. This means that the County has no assurance that Citrix 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.
5. Limitation of the total aggregate liability of Citrix, its affiliates, suppliers or authorized distributors shall not exceed the amount paid for the relevant product, during the relevant term of subscription, the relevant maintenance term or the consulting deliverable, excluding its indemnification obligations and to the extent permitted by applicable law.
 - The County Standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the contract amount leaving the County financially liable for the excess. County Counsel cannot advise on, whether and to what extent, Florida law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
6. Venue is Broward County, Florida.
 - The County standard contract requires venue for disputes in Superior Court of California, San Bernardino County, San Bernardino District.
 - Potential Impact: A venue in Florida may result in additional expenses that exceed the amount of the contract.

**Agreements with Citrix Systems, Inc. for Virtual Apps and Desktop
Advanced Edition
June 28, 2022**

The Department recommends the approval of the Citrix License Agreement and End User Services Agreement for Citrix Virtual Apps and Desktop Advanced Edition, including the non-standard terms, in order to support critical applications countywide.

PROCUREMENT

The procurement of this technology is sole-source.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Aaron Gest, Deputy County Counsel, 387-5455) on May 17, 2022; Risk Management (Victor Tordesillas, Director, 386-8623) on June 3, 2022; Finance (Carl Lofton, Administrative Analyst, 387-5404) on May 27, 2022; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on May 30, 2022.

**Agreements with Citrix Systems, Inc. for Virtual Apps and Desktop
Advanced Edition
June 28, 2022**

Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: June 28, 2022



cc: PW/Trans- Ter-Keurst w/agree
Contractor- C/O PW/Trans w/agree
File- w/agree
LA 07/14/2022