

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF THE FOLLOWING:
SAN BERNARDINO COUNTY
BOARD GOVERNED COUNTY SERVICE AREAS
AND RECORD OF ACTION**

**REPORT/RECOMMENDATION TO THE BOARD OF DIRECTORS
OF THE FOLLOWING:
BIG BEAR VALLEY RECREATION AND PARK DISTRICT
BLOOMINGTON RECREATION AND PARK DISTRICT
AND RECORD OF ACTION**

December 19, 2023

FROM

BRENDON BIGGS, Director, Department of Public Works – Special Districts

SUBJECT

Agreement with OpenGov, Inc. to Provide Software System and Implementation Services

RECOMMENDATION(S)

Acting as the governing body of San Bernardino County, all San Bernardino County Board Governed County Service Areas and their Zones, Big Bear Valley Recreation and Park District, and Bloomington Recreation and Park District:

1. Approve the Order Form and Software Services **Agreement No. 23-1215** with OpenGov, Inc., including non-standard terms, to procure an Asset and Operations Management and Capital Improvement Project Planning Software System and Implementation Services, in the amount of \$661,779 for the period January 1, 2024 through August 31, 2025.
2. Authorize a contingency fund of \$125,000 for custom asset configuration, system integration, or programming of necessary changes or additions in the Asset and Operations Management and Capital Improvement Project Planning Software System and Implementation Services, as identified and pre-approved by the Director of Public Works during implementation.
3. Authorize the Director of the Department of Public Works to approve expenditures from the contingency fund up to \$125,000, and to order any custom asset configuration, system integration, or programming of necessary changes or additions in the Asset and Operations Management and Capital Improvement Project Planning Software System and Implementation Services, as identified during implementation.
4. Authorize the Director of the Department of Public Works to execute any amendments to the Order Form and Software Services Agreement, as identified during implementation, subject to review by County Counsel.
5. Direct the Director of the Department of Public Works to transmit any amendments to the Order Form and Software Services Agreement, as identified during implementation, to the Clerk of the Board of Supervisors within 30 days of execution.

(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.

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

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 Discretionary General Funding (Net County Cost). The recommended Order Form and Software Services Agreement (SSA) continue the current Operations Management System (OMS) contract with the Department of Public Works – Transportation Division (Transportation) and adds modules specific to the operations of the Department of Public Works – Special Districts (Special Districts) and the Regional Parks Department (Regional Parks). The cost of the Order Form and SSA is \$661,779 for the period of January 1, 2024 through August 31, 2025, and will be allocated as follows:

Department	Cost
Transportation	\$ 249,609
Special Districts (*)	\$ 295,863
Regional Parks	\$ 116,307
Total	\$ 661,779

(*) Note: Special Districts includes all the Board-Governed County Service Areas and their Zones, Big Bear Valley Recreation and Park District, and Bloomington Recreation and Park District.

The \$661,779 includes the cost of a new module that will primarily benefit Special Districts' Water and Sanitation Division and will therefore be funded mostly by the County Service Areas providing water and sanitation services. Also included is the cost of a new module (Parks and Recreation Module) that will be funded primarily by the Big Bear Valley Recreation and Park District, Bloomington Recreation and Park District, and Regional Parks. A Memorandum of Understanding, which was approved by the Board of Supervisors (Board) on June 25, 2019 (Item No. 74), is in place for Special Districts to bill Regional Parks for its share of the Order Form and SSA cost.

This item also includes authorization of a \$125,000 contingency fund for custom asset configuration, system integration, or programming of necessary changes or additions in the Asset and Operations Management and Capital Improvement Project Planning Software System and Implementation Services. Any costs from the contingency fund will be funded by the respective departments (Transportation, Special Districts, Regional Parks) based on the specific changes or additions that may be needed.

Sufficient appropriation and revenue for this item are included in the 2023-24 budget of the respective departments and will be included in future recommended budgets.

BACKGROUND INFORMATION

An Asset Maintenance System (AMS) and OMS provide tools to efficiently plan, manage, and monitor asset maintenance operations and capital improvement program budgets. AMS and OMS strategies are intended to preserve and extend the lifecycle of assets by systematically intervening at strategic points in an asset's normal life cycle. Typical strategies include

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preventive maintenance scheduling, and the tracking of asset health information, inspection and work history to identify cost savings and efficiency opportunities.

On August 25, 2020 (Item No. 41), as the result of a competitive procurement, the Board approved OMS Contract No. 20-668 with Cartegraph Systems, LLC (Cartegraph) for proprietary software purchase, licensing, implementation, along with maintenance and support services, for a term of five years, from September 1, 2020 through August 31, 2025. Contract No. 20-668 was entered into by Transportation. Subsequently, on November 16, 2021, Transportation entered into Purchase Agreement No. PA05919 with Cartegraph to add the 811 Dig Alert integration to the OMS and brand the SeeClickFix 311 mobile application. Purchase Agreement Change Order No. CO 22-04859 was signed by the parties on May 10, 2022, to remove the branded component of SeeClickFix 311 customer request mobile app, which the County was unable to effectively deploy.

To plan and manage the maintenance and improvement of capital assets in a web-based system available to a mobile workforce, the Department of Public Works (Department) is proposing to enhance the existing OMS agreement by purchasing and implementing additional modules. The recommended Order Form and SSA with OpenGov, Inc. (OpenGov), which acquired Cartegraph in July 2022, supersedes the previous contract, purchase agreement and change order with Cartegraph and incorporates standard contract language for OpenGov. This recommended investment in technology will leverage Geographic Information Systems (GIS) for spatially enabled management of assets, operations and projects to provide better transparency, data-driven decision making, and visually rich real time dashboard reporting. Implementation strategies will include an evaluation of the costs and benefits of hosting the system in the cloud, rather than on County servers. Potential benefits include providing more reliable field access and reducing long-term maintenance costs for the Department.

The recommended Order Form and SSA will continue to provide functionality already in use by the Department, while extending the benefits of the system to additional business units, such as Special Districts and Regional Parks, with the addition of new modules. The SSA is OpenGov's standard commercial agreement and, following negotiation of the agreement, includes terms that differ from the standard County contract and omits certain County standard language. The non-standard and missing terms include the following:

1. Payment terms are net 45 days from the date of receipt of invoice with late payment interest of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.
 - 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 net 45 days will result in a material breach of the contract, which would allow the OpenGov to terminate the contract and seek other legal remedies, including charging the County interest at a rate of 1.5%, which could exceed the SSA amount.
2. There is no termination for convenience in the SSA.
 - 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.

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- Potential Impact: The County can only terminate the SSA during the term of an uncured breach. Any attempted termination by County without cause would result in payment liability for the full SSA amount, which could result in payment liability where no funds are available due to the lack of allocation or loss of funding.
3. The warranty provided in the SSA is limited to 90 days, provides that the software “AS IS,” and disclaims all warranties of any kind.
 - There is no warranty requirement in the County standard contract. The County expects its contractors and service providers to fully warrant the products and services they provide to the County.
 - Potential Impact: The County’s use of the software under the SSA is solely at its own risk. Under California law, sellers are not required to provide any warranty.
 4. The SSA limits OpenGov’s liability to the County to the fee amounts actually paid or payable by County to OpenGov for the software and/or services. This includes an express limitation against all incidental, special, indirect, consequential, or punitive damages; loss of profits, use revenue, or data; and business interruption. However, the limitations of liability do not apply to (1) claims based on either party’s intentional breach of its obligations set forth regarding confidentiality, (2) claims arising out of fraud or willful misconduct by either party and (3) either party’s unauthorized use, distribution, or disclosure of the other party’s intellectual property.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the SSA amounts, leaving the County financially liable for the excess.
 5. The prevailing party is entitled to recover attorneys’ fees and costs.
 - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: If either party institutes any legal proceedings related to the SSA, the prevailing party will be entitled to recover reasonable attorneys' fees, which could exceed the total SSA amount.
 6. The SSA requires that if County fails to pay any sales taxes, then County will be liable for any related penalties or interest and will indemnify OpenGov for any liability or expense incurred in connection with such sales taxes.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify, 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 OpenGov without such limitations and the County would be responsible to defend and reimburse OpenGov for costs, expenses, and damages, which could exceed the total SSA amount.
 7. The SSA does not require OpenGov to indemnify the County, 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

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(including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark, or trade secrets (Intellectual Property Rights) by any goods or services.

- Potential Impact: OpenGov is not required to defend, indemnify, or hold the County harmless from any claims, including indemnification for claims arising from its 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 OpenGov's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total SSA amount.
8. The SSA does not require OpenGov to meet the County's insurance standards as required pursuant to County Policy 11-07.
- The County Policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and set forth in the County standard contract.
 - Potential Impact: The SSA does not include County standard insurance requirements. This means that the County has no assurance that OpenGov 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 SSA amount.

The Department recommends Board approval of the Order Form and SSA, including the non-standard terms, in order to acquire software and services for continued utilization by the Department to help meet the County's goals and objectives of monitoring and evaluating operations and implementing strategies to continually improve efficiency, effectiveness and collaboration and maximize the use of labor, equipment, and materials.

PROCUREMENT

The original Contract No. 20-668 for an OMS was awarded as the result of a competitive procurement and approved by the Board on August 25, 2020 (Item No. 41). Since that time, Special Districts has merged with the Department of Public Works in order to realize greater operational efficiencies. In addition, the Department's current OMS and AMS system provider (Cartegraph) has been acquired by OpenGov. The Order Form and SSA terms will be coterminous with the existing five-year contract and shall expire on August 31, 2025. As previously mentioned, the Order Form and SSA will supersede the prior agreements described in the Background section and update the contract language with OpenGov's standard terms and conditions. The addition of the new modules to the existing platform will leverage the initial technology investment to meet additional business requirements in a more cost-effective manner. The Purchasing Department reviewed this item and concurs with the non-competitive nature of this procurement.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Aaron Gest, Deputy County Counsel, 387-5455) on November 30, 2023; Purchasing (Jason Cloninger, Lead Buyer, 387-8258) on December 6, 2023; Risk Management (Victor Tordesillas, Director, 386-8623) on November 21, 2023; Regional Parks (Beahta Davis, Director, 387-2340) on December 4, 2023; Finance (Tom Forster, Administrative Analyst, 387-4635) on December 1, 2023; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on December 7, 2023.

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Record of Action of the Board of Supervisors
San Bernardino County
Board Governed County Service Areas

Record of Action of the Board of Directors
Big Bear Valley Recreation and Park District
Bloomington Recreation and Park District

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/SECRETARY

BY 
DATED: December 19, 2023



cc: PW/SD - Biggs w/agree
Contractor - c/o PW/SD w/agree
File - w/agree
CCM 12/22/2023