

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

February 6, 2024

FROM

TRACY REECE, Chief Probation Officer, Probation Department

SUBJECT

Non-Financial Agreement and Addendum with Monday.com for Cloud-Based Project and Workflow Management Platform

RECOMMENDATION(S)

Approve non-financial Monday.com Terms of Service, which includes the Addendum to Monday.com Terms of Service for Government Customers, amending certain terms of the Monday.com Terms of Service **Agreement No. 24-129**, including non-standard terms, to provide a cloud-base project and workflow management platform to streamline workflow and collaborations, for purchase amounts as authorized by County Policy, from March 1, 2024 until the end of the service underlying the account.

(Presenter: Tracy Reece, Chief Probation Officer, 387-5692)

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 Monday.com Terms of Service, which includes the Addendum to Monday.com Terms of Service for Government Customers (collectively, Agreement), is non-financial in nature and does not commit the County to make any purchases. If future purchases are made under this Agreement, the Probation Department (Department) will adhere to County purchasing policies and return to the Board of Supervisors (Board) for approval, if necessary.

BACKGROUND INFORMATION

The Department currently uses Microsoft Corporation suite to manage its projects and workflows and has been seeking a different system to manage the Department's projects and workflows with the expansion of interdepartmental collaborations, programs, and services. The system would have the capability to centralize all work processes, tools, and files into a cloud-based server in order to plan, manage, and collaborate on any project.

The Department conducted extensive research on several project management systems and found that Monday.com's Enterprise Plan best meets the needs of the Department. The Enterprise Plan offers the Department the ability to manage projects efficiently on a cloud-based server. It would allow the Department's programs to access, use, and manage workflows and projects separately or collaboratively to reach multiple workflow needs. It would also allow the

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Department the control to add administrative users and permissions without additional costs, and provide external access for tasks to be initiated and completed by invitation.

The Agreement is Monday.com's standard contract, and includes terms that differ from the standard County contract and omits certain County standard contract terms. While the parties negotiated certain contract terms to County standards, Monday.com would not agree to all County standard terms. The non-standard and missing terms include the following:

1. Governing Law is the State of New York.
 - The County standard contract requires California governing law.
 - Potential Impact: The Agreement will be interpreted under New York law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on New York law, which may result in fees that exceed the total Agreement amount.
2. 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, New York 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.
3. To the extent permitted by applicable law, the County is required to indemnify Monday.com against third party claims arising from The County's violation of the Agreement or applicable Law and County data, including infringement of any third party's intellectual property, privacy and/or publicity rights.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify Monday.com, 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 Monday.com without such limitations and the County could be responsible to defend and reimburse Monday.com for costs, expenses, and damages, which could exceed the total Agreement amount. County Counsel cannot advise on, whether and to what extent, New York law may limit or expand this Agreement term.
4. Monday.com's maximum liability to the County is limited to the greater of \$50,000 or the total amount of fees paid by the County during the 12 months prior to the event giving rise to the liability, excluding Monday.com's indemnification obligations, gross negligence, or willful misconduct.
 - 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. County Counsel cannot advise on, whether and to what extent, New York law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
5. Venue for disputes arising under the Agreement is in New York, New York.

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- 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 New York, New York may result in additional expenses that exceed the amount of the Agreement.

The Department recommends approval of the Agreement, including non-standard terms, as this will enable the Department to use a cloud-based project and workflow management platform to streamline workflow and collaborations efficiently interdepartmentally.

PROCUREMENT

The Purchasing Department supports the informal solicitation for project workflow and management platform services. The Department conducted extensive research for a system to provide project and workflow management platform that can streamline workflow and collaborations. The Department found four entities that would meet the Department's needs, and conducted an informal solicitation to obtain proposals. Of the four entities, only three responded and provided proposals. All entities met the requirements and were evaluated by the Department based on cost and the ability to:

1. Set user specific permissions within the system in reaching multiple workflow needs.
2. Control to add Administrative Users and permissions by the Department.
3. Set up multiple units within the Department to use and manage workflows at once.
4. Provide external access for tasks to be initiated and completed.

Based on the evaluation results, Monday.com was recommended for award of the Agreement.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on January 25, 2024; Purchasing (Christina Reddix, Buyer III, 357-2060) on January 11, 2024; Risk Management (Victor Tordesillas, Director, 387-8623) on January 25, 2024; Finance (Iliana Rodriguez, Finance Analyst, 387-4205) on January 25, 2024; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on January 23, 2024.

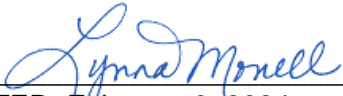
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Record of Action of the Board of Supervisors
San Bernardino County

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: February 6, 2024



cc: Probation - Drury w/agree
Contractor - c/o Probation w/agree
File - w/agree
CCM 02/13/2024