

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

August 5, 2025

FROM

LUTHER SNOKE, Chief Executive Officer, County Administrative Office

SUBJECT

Agreements and Terms of Service for Graphic Design Platforms and Video Editing Software

RECOMMENDATION(S)

1. Approve **Agreement No. 25-607** with Leonardo Interactive Pty Ltd T/A Leonardo.Ai, including non-standard terms, for use of the Leonardo.Ai platform that offers artificial intelligence driven graphic design tools, at \$288 annually, for an indefinite period of time until terminated by either party.
2. Approve **Agreement No. 608** with Kittl Technologies GmbH, including non-standard terms, for use of the Kittl platform for creating, editing, sharing, and using designs, at \$288 annually, for an indefinite period of time until terminated by either party.
3. Approve the following Agreements with Blackmagic Design Pty. Ltd., including non-standard terms, for licensing of DaVinci Resolve Studio software for artificial intelligence enhanced post-production tools that integrate editing, color correction, audio engineering, visual effects, and motion graphics in one workspace, in the amount of \$295 per license:
 - a. Agreement for the Cloud Terms and Conditions, **Agreement No. 25-609**.
 - b. Licensing Agreement, **Agreement No. 25-610**.
4. Approve **Agreement No. 25-611** with RØDE Microphones, including non-standard terms, to approve the terms of use for the RØDECaster software for soundboard control, multi-track recording and customizable audio processing tools at no cost, for an indefinite period of time until terminated by either party.
5. Authorize the County Chief Communications Officer to electronically accept the agreements in Recommendation Nos. 1-4, and any subsequent non-substantive updates to the agreements, subject to County Counsel review.
6. Direct the Chief Communications Officer to transmit printed copies of any subsequent non-substantive updates to the agreements that are electronically accepted, to the Clerk of the Board of Supervisors within 30 days of execution.

(Presenter: Martha Guzman-Hurtado, Chief Communications Officer, 387-4193)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

FINANCIAL IMPACT

Approval of these agreements will not result in the use of additional Discretionary General Funding (Net County Cost). The annual subscription cost for the Leonardo Interactive Pty Ltd T/A Leonardo.Ai (Leonardo.Ai) and the Kittl Technologies GmbH (Kittl) subscriptions are \$288 each annually. The DaVinci Resolve Studio software is available from Blackmagic Design Pty. Ltd. (Blackmagic) for a one-time cost of \$295 per license. RØDE Microphones' (RØDE)

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RØDECaster software is available at no cost. Sufficient appropriation to fund these subscriptions and the software is included in the County Communication's 2025-26 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

The San Bernardino County Communications Graphics and Multimedia Services Teams use artificial intelligence (AI) powered creative tools to enhance the quality, consistency, and efficiency of their visual and video production work. Platforms such as Leonardo.Ai and Kittl empower the Graphic Design Unit to create high-quality illustrations, graphics, and branded content through intuitive interfaces, text-to-image generation, AI-assisted layout optimization, and real-time editing. These cloud-based platforms offer robust features including model customization, image upscaling, vector support, advanced typography tools, and collaborative workspaces, allowing the team to maintain brand standards and deliver professional-grade content quickly across digital and print platforms.

The Leonardo.Ai platform employs various information security and privacy measures to protect user data that includes, but are not limited to, data encryption both in transit between users and the application, including any stored data on servers. Their Amazon Web Services platform is utilized and maintains a System and Organization Controls 2 (SOC 2) certification, which includes conducting regular external audits. Additionally, Kittl, DaVinci Resolve Studio, and RØDECaster software have similar and appropriate information security and privacy measures to mitigate the County's risks of a data breach or cyber incident.

For video production, the DaVinci Resolve Studio will provide the Multimedia Services Team with a comprehensive, AI-enhanced post-production suite that integrates editing, color correction, audio engineering, visual effects, and motion graphics in one workspace. Its Neural Engine powers smart tools like auto color matching, voice isolation, and object removal, significantly streamlining workflows while enhancing creative output. With support for real-time collaboration via Blackmagic Cloud and a cost-effective one-time license, DaVinci Resolve Studio enables the department to produce cinematic, on-brand video content that supports County messaging across social media, broadcast, and internal platforms.

The subscription with Leonardo.Ai includes Leonardo.Ai's standard terms that differ from the standard County contract and omits certain County standard contract terms. The agreement is a non-negotiable clickwrap agreement accepted upon purchase. The non-standard and missing terms include the following:

1. Governing law is the laws of New South Wales in Australia and venue is the courts in New South Wales.
 - The County standard contract requires California governing law and venue for disputes in the Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: The agreement will be interpreted under Australian law. Any questions or any disputes in court arising under this agreement will require the County to hire outside counsel competent to advise on Australian law.
2. The agreement states that the County's information will be stored in Australia by Leonardo.Ai and could be stored in other locations if Leonardo.Ai provides the information to third parties.

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- The County standard contract for information technology products and services requires data to be stored in the Continental United States and prohibits it from being transmitted, processed or stored outside of the Continental United States.
 - Potential Impact: The County's information can be stored and transmitted to other countries, which could result in disclosure of any information provided or other unknown impacts based upon the laws of that country.
3. The agreement may be amended at any time by providing the County with written notice. The County is required to either accept the revised terms or cancel the subscription.
- The County standard contract requires any changes to the contract be reduced to writing, executed 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 of Supervisors (Board).
4. The agreement term is indefinite, beginning when the service is purchased and continuing until termination by the County at the end of a subscription period.
- County Policy 11-05 does not permit indefinite term contracts, although exceptions are allowed for software end user license agreements, cloud service subscriptions and master or support service agreements.
 - 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 end of the subscription period following cancellation.
5. Payment terms state that any late payments will be charged an interest at the rate equal to the Reserve Bank of Australia's cash rate plus two percent or the account may be suspended.
- 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. Late payments may be subject to interest payments or suspension of the County account.
6. Leonardo.Ai's maximum liability to the County is limited to the amount of any subscription fees paid by the County for the services or if no subscription fees were paid \$1,000 Australian dollars.
- The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap leaving the County financially liable for the excess amount. County Counsel cannot advise on whether and to what extent Australian law may limit or expand the exclusion of liability limits in the agreement.
7. Leonardo.Ai 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: Leonardo.Ai 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

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- until it becomes aware of the assignment and terminates the agreement. County Counsel cannot advise on whether and to what extent Australian law may permit or restrict a party's right to assign the agreement.
8. All disputes arising under the agreement must be settled by binding arbitration administered by the Australian Centre for International Commercial Arbitration (ACICA) with arbitration conducted in Sydney, New South Wales under, ACICA arbitration rules.
 - The County standard contract does not require arbitration.
 - Potential Impact: County Counsel cannot advise on what arbitration under ACICA involves.
 9. The agreement does not require Leonardo.Ai 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 the 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 that contractor will indemnify, defend, and hold harmless the County from any and all third-party claims, costs (including reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret by any goods or services.
 - Potential Impact: Leonardo.Ai is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from Leonardo.Ai'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 Leonardo.Ai's software or services, the County may be solely liable for the costs of defense and damages. County Counsel cannot advise on whether and to what extent Australian law may allow the County to require Leonardo.Ai to defend or indemnify it.
 10. The agreement does not require Leonardo.Ai 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 Leonardo.Ai will be financially responsible for claims that may arise under the agreement, which could result in expenses to the County.

The subscription with Kittle includes Kittl's standard terms that differ from the standard County contract and omits certain County standard contract terms. The agreement is a non-negotiable clickwrap agreement accepted upon purchase. The non-standard and missing terms include the following:

1. Governing law is the law of the Federal Republic of Germany and venue is the courts in Berlin, Germany.
 - The County standard contract requires California governing law and venue for disputes in the Superior Court of California, County of San Bernardino, San Bernardino District.

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- Potential Impact: The agreement will be interpreted under German law. Any questions or any disputes in court arising under this agreement will require the County to hire outside counsel competent to advise on German law.
2. The agreement may be amended at any time by providing the County with written notice. The County is required to either accept the revised terms or stop using the platform.
 - The County standard contract requires any changes to the contract be reduced to writing, executed 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.
 3. The agreement term is indefinite, beginning when the service is purchased and continuing until termination by the County within 14 days of the end of a subscription period to receive a refund of the subscription payment or at any time by deleting the account.
 - County Policy 11-05 does not permit indefinite term contracts, although exceptions are allowed for software end user license agreements, cloud service subscriptions and master or support service agreements.
 - Potential Impact: There is no end term to the agreement and the County is indefinitely bound to the terms and conditions of the agreement unless terminated within 14 days of the end of a subscription period or at any time by deleting the account.
 4. Kittl's has no liability to the County except in the event of intentional or negligent injury to life, body or health, fraudulently concealed defects or as required under the German Product Liability Act. In the event of damage to property and financial losses caused by slight negligence, liability is limited to the amount of foreseeable damage.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap, leaving the County financially liable for the excess. County Counsel cannot advise on whether and to what extent German law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
 5. The agreement does not require Kittl 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 the 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 that the contractor will indemnify, defend, and hold harmless the County from any and all third-party claims, costs (including reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret by any goods or services.
 - Potential Impact: Kittl is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from Kittl'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 Kittl's software or services, the County may be solely liable for the costs of defense and damages. County Counsel cannot advise on whether and to what extent

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German law may allow the County to require Kittl to defend or indemnify it absent an express provision of the agreement.

6. The agreement does not require Kittl 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 Kittl will be financially responsible for claims that may arise under the agreement, which could result in expenses to the County.

The use of the Blackmagic cloud services enables real-time, multi-user collaboration, allowing multiple editors to work on the same project simultaneously using the DaVinci Resolve Studio software. The agreement includes contract terms that differ from the standard County contract and omits certain County standard contract terms. The non-standard and missing terms include the following:

1. Governing law is the laws of the State of Victoria in Australia and venue is the courts in the State of Victoria and the Federal Court of Australia.
 - The County standard contract requires California governing law and venue for disputes in the Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: The agreement will be interpreted under Australian law. Any questions or any disputes in court arising under this agreement will require the County to hire outside counsel competent to advise on Australian law.
2. The agreement may be amended at any time by providing the County with notification of the revisions.
 - The County standard contract requires any changes to the contract be reduced to writing, executed 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.
3. Blackmagic provides the services and/or product "AS IS" and disclaims all warranties of any kind.
 - County Policy 11-05 requires a contractor to fully warrant its services and products.
 - 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 Australian law may limit or expand the disclaimers of warranty to the extent prohibited by applicable law.
4. Blackmagic's maximum liability to the County is limited to either supplying the services again or the cost of having the services supplied again.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap, leaving the County financially liable for the excess costs. County Counsel cannot advise on whether and to what extent Australian law may limit or expand the limitation of liability.

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5. The County is required to indemnify Blackmagic against any claim arising from the County's use of the service, the content uploaded, stored or created on the service, the County's breach of the agreement, any action by Blackmagic related to enforcing the agreement as a result of the County's breach of the agreement and the County's infringement of the intellectual property rights.
 - The County standard contract does not include any indemnification by the County of a contractor.
 - By agreeing to indemnify Blackmagic, 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 Blackmagic without such limitations and the County could be responsible to reimburse Blackmagic for costs, expenses and damages. County Counsel cannot advise on whether and to what extent Australian law may limit or expand this indemnification.
6. The agreement does not require Blackmagic 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 the 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 that contractor will indemnify, defend, and hold harmless the County from any and all third party claims, costs (including reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret by any goods or services.
 - Potential Impact: Blackmagic is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from Blackmagic'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 Blackmagic's software or services, the County may be solely liable for the costs of defense and damages. County Counsel cannot advise on whether and to what extent Australian law may allow the County to require Blackmagic to defend or indemnify it.
7. The agreement does not require Blackmagic 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 Blackmagic will be financially responsible for claims that may arise under the agreement, which could result in expenses to the County.
8. Blackmagic 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: Blackmagic 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

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until it becomes aware of the assignment and terminates the agreement. County Counsel cannot advise on whether and to what extent Australian law may permit or restrict a party's right to assign the agreement.

A license agreement with Blackmagic is required to access the DaVinci Resolve Studio software. The license agreement includes contract terms that differ from the standard County contract and omits certain County standard contract terms. The non-standard and missing terms include the following:

1. Governing law is the laws of the State of Victoria in Australia and venue is the courts in the State of Victoria, Australia.
 - The County standard contract requires California governing law and venue for disputes in the Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: The agreement will be interpreted under Australian law. Any questions or any disputes in court arising under this agreement will require the County to hire outside counsel competent to advise on Australian law.
2. Blackmagic provides the services and/or product "AS IS" and disclaims all warranties except that for 90 days from purchase of the license the software will be free from material defects in normal use.
 - County Policy 11-05 requires a contractor to fully warrant its services and products.
 - Potential Impact: The County's use of the services and/or products is solely at its own risk, except during the first 90 days. County Counsel cannot advise on whether and to what extent Australian law may limit or expand the disclaimers of warranties.
3. Blackmagic's maximum liability to the County is limited to replacement of the software or a refund of the license fee.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact Claims could exceed the liability cap leaving the County financially liable for the excess. County Counsel cannot advise on whether and to what extent Australian law may limit or expand the limitation of liability.

The RØDECaster App software includes RØDE's Terms of Service, including non-standard terms that differ from the standard County contract and omit certain County standard contract terms. The agreement is a non-negotiable clickwrap agreement accepted upon download of the software. The non-standard and missing terms include the following:

1. Governing law is Australia and venue is the courts in Australia.
 - The County standard contract requires California governing law and venue for disputes in the Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: The agreement will be interpreted under Australian law. Any questions or any disputes in court arising under this agreement will require the County to hire outside counsel competent to advise on Australian law.
2. RØDE does not guarantee or warrant that any files or content available for download on the site will be free of infection by software viruses or other harmful computer code. RØDE is not liable for any damage caused to County computers or equipment from software virus or harmful computer code.

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- County Policy 11-05 requires a contractor to fully warrant its services and products.
 - Potential Impact: The County's use of the services and/or products is at its own risk and the County will be responsible to repair any damage caused if there is a software viruses or computer code. County Counsel cannot advise on whether and to what extent Australian law may limit or expand the disclaimers of warranty.
3. The County is required to indemnify and defend RØDE against any claim arising from the County's use of the service or violation of the agreement.
- The County standard contract does not include any indemnification by the County of a contractor.
 - By agreeing to indemnify RØDE, 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 RØDE without such limitations and the County could be responsible to reimburse RØDE for costs, expenses and damages. County Counsel cannot advise on whether and to what extent Australian law may limit or expand this indemnification.
4. RØDE has no liability to the County except in the event of death or personal injury due to negligence, or fraudulent misrepresentation or other liability that cannot be excluded under Australian law.
- The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could leave the County financially liable for the costs. County Counsel cannot advise on whether and to what extent Australian law may limit or expand the limitation of liability.
5. The agreement does not require RØDE 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 the 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 that contractor will indemnify, defend, and hold harmless the County from any and all third-party claims, costs (including reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret by any goods or services.
 - Potential Impact: RØDE is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from RØDE'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 RØDE's software or services, the County may be solely liable for the costs of defense and damages. County Counsel cannot advise on whether and to what extent Australian law may allow the County to require RØDE to defend or indemnify it.
6. The agreement does not require RØDE 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.

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- Potential Impact: The County has no assurance that RØDE will be financially responsible for claims that may arise under the agreement which could result in expenses to the County.

The County Administrative Office recommends approval of the agreements with Leonardo.Ai., Kittl, Blackmagic and RØDE, including non-standard terms, as these agreements would benefit the County with its scalable, cost-effective solution for producing high-quality, branded visual content. These AI-powered creative platforms and software streamline the creative process, enabling the County to efficiently generate professional videos, graphics, illustrations, and concept visuals that support County messaging and public engagement across various platforms.

The County Administrative Office recommends authorizing the County Chief Communications Officer to electronically accept the agreements in Recommendation Nos. 1–4, and any subsequent non-substantive updates to the agreements, subject to County Counsel review, as these agreements are presented as clickwrap agreements that require immediate electronic acceptance in order to access and utilize the associated services, platforms, or software.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Julie Surber, Principal Assistant County Counsel, 387-5455) on July 16, 2025; Innovation and Technology Department (Robert Pittman, Chief Information Security Officer and Lynn Fyhrlund, Chief Information Officer, 388-5510) on July 17, 2025; Risk Management (Gregory Ustaszewski, Staff Analyst II, 386-9008) on July 21, 2025; Purchasing (Ariel Gill, Supervising Buyer) on July 21, 2025; and County Finance and Administration (Erika Rodarte, Administrative Analyst, 387-4919) on July 21, 2025.

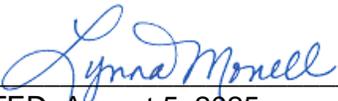
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Record of Action of the Board of Supervisors
San Bernardino County

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: August 5, 2025



cc: CAO - Garcia w/agrees
Contractor - c/o CAO w/agree
File - w/agree
CCM 08/18/2025