

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

September 23, 2025

FROM

VICTOR TORDESILLAS, Deputy Executive Officer, Human Services

SUBJECT

Non-Financial Agreement with Qualtrics, LLC and Purchase Order for Qualtrics EmployeeXM360, XM for Employee Experience Software

RECOMMENDATION(S)

1. Approve non-financial **Agreement No. 25-732** with Qualtrics, LLC, including non-standard terms, for a subscription to cloud-based employee experience software and an employee engagement survey system, for the contract period of October 1, 2025 through September 30, 2026.
2. Authorize the Purchasing Agent to issue a Purchase Order to Carahsoft, an authorized Qualtrics reseller, to subscribe to the Qualtrics EmployeeXM360, XM for Employee Experience software as a service, and provide services to implement an employee engagement survey, through the California Participating Addendum No. 7-17-70-40-05 to the Utah National Association of State Procurement Officers Cloud Solutions Master Agreement No. 22-309 (Master Service Agreement AR2472) for a one-time cost of \$240,392.38, for the period of October 1, 2025, through September 30, 2026.
3. Authorize the Purchasing Agent to execute any documents that may be required by the State of California to execute orders against the California Participating Addendum referenced in Recommendation No. 2, subject to County Counsel review.

(Presenter: Victor Tordesillas, Deputy Executive Officer, 387-4717)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Promote the Countywide Vision.

Improve County Government Operations.

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

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost). The \$240,392.38 one-time cost for the Qualtrics EmployeeXM360, XM for Employee Experience subscription and survey is a Countywide initiative and has been included in the County Administrative Office's Countywide Discretionary 2025-26 budget.

BACKGROUND INFORMATION

The General Terms and Conditions for Indirect Qualtrics Services (Agreement) with Qualtrics, LLC (Qualtrics) grants the Performance, Education, and Resource Center (PERC) a subscription to use EmployeeXM 360, a cloud-based employee experience software and an employee engagement survey system that will provide results that include recommendations for organizational improvement, and manager action-planning. The data analysis and reporting is

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specialized technology exclusive to Qualtrics. The total cost includes the services of Workforce Science Associates (WSA) on behalf of Carahsoft to implement the survey for up to 20,000 participants. WSA's services include overall project management, survey design, survey administration, reporting of results, and a post-survey executive summary presentation. PERC currently utilizes Qualtrics as a vendor to develop and maintain the Qualtrics Dashboards, which houses the Employee Experience Survey data that was collected from April 30, 2025 to May 14, 2025. This survey was completed under a Purchase Order (PO) in the amount of \$171,804.12 that included a subscription to software as a service and implementation of one employee survey that was approved by Purchasing on September 26, 2024. The PO expires September 30, 2025. If a new order is not approved prior to the expiration date, it will result in a loss of previous dashboard data collected and analyzed.

On April 26, 2022 (Item No. 38), the Board of Supervisors (Board) approved the California Participating Addendum No. 7-17-70-40-05 (California PA) to the Utah National Association of State Procurement Officers (NASPO) Cloud Solutions Master Agreement (Agreement) with Carahsoft Technology Corporation for Countywide purchases of cloud solution services authorized under the California PA for the period from April 26, 2022 to September 15, 2026.

The Agreement is Qualtrics' standard commercial contract, which includes terms that differ from the standard San Bernardino County (County) contract and omits certain County standard contract terms. The Agreement is a non-negotiable contract for indirect purchasers. The non-standard and missing terms include the following:

1. Governing law is the State of Delaware.
 - The County standard contract requires California governing law.
 - Potential Impact: The Agreement will be interpreted under Delaware law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on Delaware law, which may result in fees that exceed the total Agreement amount.
2. Qualtrics 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: Qualtrics 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. County Counsel cannot advise on whether and to what extent Delaware law may permit or restrict a party's right to assign without an express provision in the Agreement.
3. 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, Delaware 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.

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4. The County is required to indemnify Qualtrics against third party claims related to the County's data.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify Qualtrics, 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 Qualtrics without such limitations and the County could be responsible to defend and reimburse Qualtrics for costs, expenses, and damages, which could exceed the total Agreement amount. County Counsel cannot advise on, whether and to what extent, Delaware law may limit or expand this Agreement term.
5. The Agreement does not require Qualtrics 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 Qualtrics 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.
6. Qualtrics's maximum liability to the County is limited to the annual fees paid by the County for the applicable cloud services, excluding claim based on indemnification obligations and death or bodily injury arising from either party's 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, Delaware law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
7. There is no termination for convenience.
 - 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.
 - Potential Impact: Upon any termination by either party regardless of cause, the County may be required to pay the entire contract amount, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.
8. Venue for disputes arising under the Agreement is in Wilmington, Delaware.
 - 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 Wilmington, Delaware may result in additional expenses that exceed the amount of the Agreement.

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The Purchasing Department and PERC recommend approval of this Agreement and PO as a non-competitive procurement, including the non-standard terms. This will allow the County to conduct a new survey of up to 20,000 participants, continue the use of proprietary software to further develop a dashboard that captures and analyzes data of past and present employee experience feedback/data, and serve as a helpful tool when using 360 feedback for use with leadership and management. County Policy 11-04, Procurement of Goods, Supplies, Equipment, and Services, requires the Department to seek Board approval for purchases of goods in excess of \$200,000 annually.

PROCUREMENT

NASPO ValuePoint is a cooperative purchasing program that helps facilitate public procurement and provides competitive pricing options due to its collective purchasing power. The procurement under NASPO consists of a competitive process conducted by a lead agency. Utah is assigned as the lead agency for this specific NASPO Agreement. Under this agreement, the State of California signed the California PA approving participation for the State, political subdivisions, and other eligible entities for the term of September 15, 2017 through September 15, 2026. As a political subdivision, the County is allowed to participate in this cooperative agreement.

REVIEW BY OTHERS

This item has been reviewed by Human Services Contracts (Lisa Rivas-Ordaz, Contracts Manager, 388-0222) on August 28, 2025; County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on August 19, 2025; Purchasing (Ariel Gill, Supervising Buyer, 387-2070) on August 21, 2025; Risk Management (Greg Ustaszewski, Staff Analyst II, 386-8655) on August 25, 2025; Innovation and Technology Department (Lynn Fyhrlund, Chief Information Officer, 388-5501) on August 22, 2025; and County Finance and Administration (John Hallen, Principal Administrative Analyst, 388-0208) on August 19, 2025.

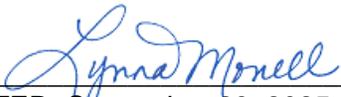
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Record of Action of the Board of Supervisors
San Bernardino County

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: September 23, 2025



cc: HS - West w/agree
Contractor - c/o HS w/agree
File - w/agree
MBA 09/24/2025