

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

**March 12, 2024**

**FROM**

**LYNN FYHRLUND, Chief Information Officer, Innovation and Technology Department**

**SUBJECT**

Non-Financial Terms and Conditions with SearchWP, LLC for SearchWP Plugin Search Feature

**RECOMMENDATION(S)**

1. Approve non-financial Terms and Conditions, including non-standard terms (**County Contract No. 24-208**), with SearchWP, LLC for the use of a web and application search feature known as a SearchWP plugin, for the retroactive period commencing on July 7, 2021 and continuing until terminated by either party.
2. Authorize the Chief Information Officer or Assistant Chief Information Officer to electronically accept the Terms and Conditions in Recommendation No. 1, with SearchWP, LLC, and any future updates, as they pertain to changes to the use of the SearchWP plugin, subject to review by County Counsel, provided that such updated terms do not substantively modify the terms of the original agreement.
3. Direct the Chief Information Officer or Assistant Chief Information Officer to transmit printed copies of any updated terms to the Terms and Conditions in Recommendation No. 1 related to the use of the SearchWP plugin that are electronically accepted to the Clerk of the Board of Supervisors within 30 days of acceptance.

(Presenter: Lynn Fyhrlund, Chief Information Officer, 388-5501)

**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 Terms and Conditions (Terms) with SearchWP, LLC (SearchWP) are non-financial in nature and does not commit the County to make any purchases. If future purchases are made under these Terms, the Innovation and Technology Department (ITD) will adhere to County purchasing policies and return to the Board of Supervisors (Board) for approval, if necessary.

**BACKGROUND INFORMATION**

The ITD Business Solutions Development Division (Division) facilitates the development, maintenance, support, and enhancement of business applications for County departments on a variety of operating systems and software platforms. This includes the design, development, enhancement, and maintenance of internal County and public-facing websites.

SearchWP improves a user's ability to obtain relevant search results within a website. It offers features to customize field dropdown menus and provides autocomplete suggestions based on

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captured user activity. It also allows for the creation of an algorithm that filters the website content to show results that have a higher relevancy to what is commonly searched. The plugin is currently in use on the Countywide Plan website for website information searches and allows the County to collect data on what topics are searched for most frequently.

On January 28, 2020 (Item No. 22), the Board approved Contract No. 20-37 accepting the Terms for a subscription to the SearchWP plugin for a five-year period, from March 27, 2020 through March 26, 2025. SearchWP subsequently revised the Terms in 2021 without notifying ITD. ITD became aware of the revised Terms on December 15, 2023 when reviewing the online Terms, which apply to an upcoming purchase. Approval of Recommendation No.1 will allow the County to agree to the non-financial terms, including non-standard terms, with SearchWP for continued use of their SearchWP plugin retroactively from July 7, 2021 continuing until terminated by either party, which supersede all prior agreements, upon Board approval.

The Terms are SearchWP's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. The Terms are a non-negotiable clickwrap agreement accepted when downloading the software. The non-standard and missing terms include the following:

1. Governing law is the State of Florida.
  - The County standard contract requires California governing law.
  - Potential Impact: The Terms will be interpreted under Florida law. Any questions, issues or claims arising under the Terms 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. SearchWP may change the Terms without notice at any time.
  - County Policy 11-06 requires that any changes to the contract to be reduced to writing, executed and attached to the original contract 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. County Counsel cannot advise on whether and to what extent Florida law may affect the enforceability of unilateral changes to the terms.
3. The Terms do not require SearchWP 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: Contractor will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services.
  - Potential Impact: SearchWP is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from SearchWP'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 SearchWP's software or services, the County may be solely liable for the costs of

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defense and damages, which could exceed the total contract amount. County Counsel cannot advise on whether and to what extent Florida law may allow the County to require SearchWP to defend or indemnify it absent an express provision in the contract.

4. The County is required to indemnify SearchWP and its subsidiaries, affiliates, co-branders, all third-party advertisers, technology providers, service providers or other partners, and each of their respective officers, directors, agents, shareholders, employees and representatives, against any third party claim arising out of the Terms or the Site, including:  
(a) The County's use, non-use or misuse of, or connection to the SearchWP site, services and content; (b) the County's breach or alleged breach of the Terms; and (c) the County's violation of any third party's rights, including intellectual property rights.
  - The County standard contract does not include any indemnification or defense by the County of a contractor.
  - Potential Impact: By agreeing to indemnify SearchWP, 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 SearchWP without such limitations and the County could be responsible to defend and reimburse SearchWP for costs, expenses, and damages, which could exceed the total contract amount. County Counsel cannot advise on, whether and to what extent, Florida law may limit or expand these obligations.
5. The Terms do not require SearchWP 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 SearchWP will be financially responsible for claims that may arise under the Terms, which could result in expenses to the County that exceed the total contract amount.
6. SearchWP's maximum liability to the County for a single incident is limited to the amount paid by the County in the 12 months preceding the claim, and the total amount paid by the County in the aggregate without any exclusions.
  - 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.
7. Venue for disputes arising under the Terms is in the courts in West Palm Beach, Palm Beach County, Florida.
  - 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 West Palm Beach, Florida may result in additional expenses that exceed the amount of the contract.
8. SearchWP provides the services and/or products "AS IS" and disclaims all warranties of any kind.
  - County Policy 11-05 requires a contractor to fully warrant its services and products.

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- 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, Florida law may limit or expand the disclaimers of warranty to the extent prohibited by applicable law.

ITD recommends approval of the Terms with SearchWP, including non-standard terms, to allow ITD to continue to improve a user's ability to obtain relevant search results within County websites.

**PROCUREMENT**

The Terms, including non-standard terms, will be used to accompany future purchase orders to be approved, as necessary, per County Policy 11-04, Procurement of Goods, Supplies, Equipment, and Services, provided that SearchWP does not substantively modify the Terms.

SearchWP's plugin was initially acquired in 2020 as part of the modernization of County websites and is currently being utilized in the Countywide Plan website. Other similar software products, such as ElasticPress, were evaluated but did not fully meet the needs of the County. The Purchasing Department continues to support this non-competitive procurement.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on February 2, 2024; Purchasing (Ariel Gill, Supervising Buyer, 387-2070) on February 9, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst II, 386-9008) on February 2, 2024; Finance (Iliana Rodriguez, Administrative Analyst, 387-4205) on February 22, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on February 26, 2024.

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Record of Action of the Board of Supervisors  
San Bernardino County

**APPROVED (CONSENT CALENDAR)**

Moved: Joe Baca, Jr. Seconded: Jesse Armendarez

Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY   
DATED: March 12, 2024



cc: IT - Thomas w/agree  
Contractor - c/o IT w/agree  
File - w/agree  
CCM 03/15/2024