

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

October 22, 2024

**FROM**

**CHRIS WILHITE, Assessor-Recorder-County Clerk**

**SUBJECT**

Agreement with SmartBear for Software Services

**RECOMMENDATION(S)**

1. Approve a non-financial Terms of Use **Agreement No. 24-1006** with SmartBear, including non-standard terms, for software services, effective October 22, 2024, and continuing until terminated by either party.
2. Authorize the Assessor-Recorder-County Clerk to electronically accept the Terms of Use Agreement in Recommendation No. 1 related to software services offered by SmartBear.  
(Presenter: Chris Wilhite, Assessor-Recorder-County Clerk, 382-3208)

**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 SmartBear Terms of Use Agreement (Agreement) is non-financial in nature and does not commit the County to make any purchases. When future purchases are made under this Agreement, County purchasing policies will be adhered to, and the Assessor-Recorder-County Clerk Department (ARC) will return to the Board of Supervisors (Board) for approval, if necessary.

**BACKGROUND INFORMATION**

The Assessor Division of ARC is responsible for locating, describing, and identifying ownership of property within the county; establishing a taxable value for properties subject to taxation; applying applicable legal exemptions; and publishing annual and supplemental assessment rolls. The ARC is the main data source for many internal and external public agencies, property owners, and business entities for public records. The Property Information Management System (PIMS), the current Information Technology (IT) system that houses this data, is being modernized to a supportable IT platform that uses current and industry standard programming languages. The new modernized system will be called the Assessor's Information Management System (AIMS).

SmartBear software services are beneficial to the PIMS upgrade project by providing testing software. This software uses test script automation, which will assist with time management as this method is more efficient than manually testing. Testing takes place biweekly, and this software will reduce the time of the quality assurance process (QA) by approximately 50

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percent. Developers that are working on the project will use this software to smoke test which are preliminary checks of multiple sub-systems prior to building them out. A smoke test ensures that the main functions are working correctly before more detailed testing is done. Testing the AIMS system as it is being developed and before it is released into a QA environment, will reduce the number of new and regression defects, which will ultimately improve the pace of the project timeline.

The Agreement is Smartbear's standard commercial contract, which includes terms that differ from the standard County Contract and omits County standard contract terms. The non-standard and missing terms include the following:

1. Smartbear may change the Terms and Conditions and privacy policy with 30 days' notice at any time.
  - The County standard contract 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 Contractor and County.
  - Potential Impact: Smartbear may change the Terms and Conditions and privacy policy with 30 days' notice at any time. The County could be agreeing to new terms without review by anyone, including County Counsel, and without the approval of the new terms by the Board. Note, the Contract does allow the County to reject a proposed amendment and continue to operate under the original contract provisions.
2. Governing law is New York.
  - The County standard contract requires California governing law.
  - Potential Impact: The contract will be interpreted under New York law. Any questions, issues or claims arising under this contract will require the County to hire outside counsel competent to advise on New York law, which may result in fees that exceed the total contract amount.
3. The County is required to indemnify Smartbear against third party claims related to the use of Customer Data, misappropriation of third-party intellectual property rights, and excluded data.
  - The County standard contract does not include any indemnification or defense by the County of a Contractor.
  - Potential Impact: By agreeing to indemnify Smartbear, 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 Smartbear without such limitations and the County would be responsible to defend and reimburse Smartbear for costs, expenses, and damages, which could exceed the total contract amount. County Counsel cannot advise on, whether and to what extent, New York law may limit or expand this contract term.
4. The contract does not require Smartbear to meet the County insurance standards.
  - The County standard contract requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.
  - Potential Impact: Contractor is located in Massachusetts. Having no express venue in the contract means that a Massachusetts venue could be applied to this contract, which may result in additional expenses that exceed the amount of the contract.

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5. There is no stated venue in the contract.
  - The County standard contract requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
  - Potential Impact: Contractor is located in Massachusetts. Having no express venue in the contract means that a Massachusetts venue could be applied to this contract, which may result in additional expenses that exceed the amount of the contract.

The recommended Agreement will enable ARC to receive software services from SmartBear. Approval of this item will allow ARC to improve County government operations and operate in a fiscally-responsible and business-like manner by providing an efficient method for testing the new AIMS system while it is being developed.

**PROCUREMENT**

The Agreement, including non-standard terms, will be used to make future purchases to be approved as necessary, in accordance with County Policy 11-04, Procurement of Goods, Supplies, Equipment, and Services.

County Policy 11-05 requires departments to obtain Board approval for procurement of goods and services with non-standard terms and conditions.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Kenneth Brown, Deputy County Counsel, 387-5455) on September 24, 2024; Purchasing (Ariel Gill, Supervising Buyer, 387-2070) on September 25, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst II, 386-9008) on September 25, 2024; Innovation and Technology (Lynn Fyhrlund, Chief Information Officer, 388-5501) on September 27, 2024; Finance (Penelope Chang, Administrative Analyst, 387-4886) on September 30, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on October 4, 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, Curt Hagman, Joe Baca, Jr.  
Absent: Dawn Rowe

Lynna Monell, CLERK OF THE BOARD

BY   
DATED: October 22, 2024



cc: ARC - Robbins w/agree  
Contractor - c/o ARC w/agree  
File - w/agree  
CCM 10/23/2024