



San Bernardino County

Legislation Text

File #: 3015, Agenda Item #: 21

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

October 6, 2020

FROM

LARRY AINSWORTH, Chief Information Officer, Information Services Department

SUBJECT

End User License Agreement with GEO Jobe for Software and Support

RECOMMENDATION(S)

1. Approve the Clean My Org End User License Agreement with GEO Jobe GIS Consulting for administrative software and support for an indefinite term, terminable at any time.
 2. Approve the Admin Tools for Portal End User License Agreement with GEO Jobe GIS Consulting for a suite of administrative software and support for an indefinite term, terminable at any time.
- (Presenter: Brent Rolf, GIS Manager, 388-5917)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

Approval of the End User License Agreement (EULA) will not result in the use of additional Discretionary General Funding (Net County Cost). This agreement does not commit the County to make any purchases. If future purchases are made under this agreement, ISD will adhere to County purchasing policies and return to the Board for approval, if necessary.

BACKGROUND INFORMATION

GIS answers the questions of where things are, where things happened, where resources are being deployed, or where there is actionable opportunity. GIS augments existing department information with location data points enabling organizations to visualize, understand, and interpret data in ways that reveal relationships, patterns, and trends of a wide variety of information through the use of maps, reports, and charts. The County utilizes the Environmental Systems Research Institute (Esri) ArcGIS Online and ArcGIS Enterprise Portal platforms to provide mapping and data visualization applications via the internet and web browsers.

GEO Jobe is a GIS service provider that provides administrative tools for the management of Esri's ArcGIS Online and ArcGIS Enterprise Portal platforms. GEO Jobe's Clean My Org and Admin Tools for Portal are software products that will allow the County's GIS system administrators to automate many of the manual processes that are currently used to manage these platforms. With GEO Jobe's on-demand and scheduled scanner tools, ISD will be able to detect inactive users, unused items, broken maps and references, and will resolve issues specific to the County's ArcGIS Online and ArcGIS Enterprise Portal platforms. Additionally, the

County's GIS administrators will be able to create and manage administrative critical tasks quicker and easier.

Both the GEO Jobe Admin Tools for Portal End User License Agreement and the Clean My Org License Agreement (EULAs) are GEO Jobe's standard commercial licenses and provide nearly identical terms, which include terms that differ from the standard County contract, and omit certain County standard contract terms. The non-standard and missing terms include the following:

1. Governing law of both EULAs is the State of Tennessee.
 - The County standard contract requires California governing law.
 - Potential Impact: The EULAs will be interpreted under Tennessee law. Any questions, issues or claims arising under either EULA will require the County to hire outside counsel competent to advise on Tennessee law, which may result in fees that exceed the total contract amount.
2. The EULAs are silent on GEO Jobe's assignment of the contract. The County may not assign either EULA without GEO Jobe's prior written consent.
 - The County must approve any assignment of the contract.
 - Potential Impact: County Counsel cannot advise on the extent that Tennessee law may permit GEO Jobe to assign either EULA without notice and without the County's consent.
3. GEO Jobe offers no indemnity in either EULA.
 - 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. The County standard contract general indemnity provision requires the Contractor to indemnify, defend, and hold County harmless from third party claims arising out of the acts, errors or omissions of any person.
 - Potential Impact: GEO Jobe is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from GEO Jobe'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 GEO Jobe's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total contract amount. County Counsel cannot advise on whether and to what extent Tennessee law may allow the County to require GEO Jobe to defend or indemnify it absent an express provision in the contract.
4. The EULAs do not require GEO Jobe to meet the County's standard insurance requirements.
 - 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: The County has no assurance that GEO Jobe will be financially responsible for claims that may arise from the County's use of the software, which could result in expenses to the County that exceed the total contract amount.
5. The term of each EULA becomes effective upon execution of a Software purchase order and continues until terminated by the County.
 - County Policy 11-06SP does not permit indefinite term or automatically renewing contracts unless approved by the Board.
 - Potential Impact: The County is indefinitely bound to the terms and conditions of the EULAs until the County gives notice of termination to GEO Jobe.
6. The EULAs are silent on venue.

- The County standard contract requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
- Potential Impact: GEO Jobe is located in Davidson County, Tennessee. Having no express venue in the EULAs means that venue could be set as Davidson County, Tennessee and the County could be required to bring or defend claims in this venue, which may result in additional expenses that exceed the amount of the contract. County Counsel cannot advise on whether, and to what extent, Tennessee law may affect the choice of venue.

7. GEO Jobe disclaims all warranties.

- There is no warranty requirement in the County standard contract. The County expects its contractors to fully warrant all services and products.
- Potential Impact: The County's use of the software is solely at its own risk. County Counsel cannot advise on, whether and to what extent, Tennessee law may limit or expand the disclaimers of warranty to the extent prohibited by applicable law.

ISD recommends approval of the EULA with GEO Jobe, including non-standard terms, to allow ISD to access enhancements designed for Esri's ArcGIS platform. The perpetual agreement is a vendor requirement; however, it can be terminated by the County at any time. This will allow ISD to streamline necessary critical administrative tasks through automation by detecting inactive users, unused items, and broken maps and references which will increase functionality within the platform.

PROCUREMENT

The terms in the EULA with GEO Jobe, including the non-standard terms, will be used to accompany future purchase orders to be approved, as necessary, per County Policy 11-04.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5545) on September 10, 2020; Purchasing (Jessica Barajas, Lead Buyer, 388-5546) on September 10, 2020; Finance (Joon Cho, Administrative Analyst, 387-5402) on September 18, 2020; and County Finance and Administration (Kelly Welty, Deputy Executive Officer, 387-4376) on September 18, 2020.