



# San Bernardino County

## Legislation Text

---

**File #: 3164, Agenda Item #: 28**

---

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

**November 17, 2020**

#### **FROM**

**ENSEN MASON, Auditor-Controller/Treasurer/Tax Collector**

#### **SUBJECT**

KnowledgeLake Software License Exchange Agreement

#### **RECOMMENDATION(S)**

1. Approve Software License Exchange Agreement and Cloud Service Subscription Agreement with KnowledgeLake, Inc. for subscription software as a service for the two-year period of November 30, 2020, through November 29, 2022, in the amount of \$29,124 for year one and \$33,201 for year two, for a total amount of \$62,325.
2. Designate the Auditor-Controller/Treasurer/Tax Collector or their designee to execute the Functional Design document and any subsequent non-substantive amendments on behalf of the County, subject to review by County Counsel.
3. Direct the Auditor-Controller/Treasurer/Tax Collector to transmit all documents and amendments in relation to this agreement to the Clerk of the Board of Supervisors within 30 days of execution.  
(Presenter: Doug Boyd, Assistant Auditor-Controller/Treasurer/Tax Collector, 382-7004)

#### **COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Improve County Government Operations.**

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

#### **FINANCIAL IMPACT**

This item will not result in the use of additional Discretionary General Funding (Net County Cost). Sufficient appropriation has been included in the Auditor-Controller/Treasurer/Tax Collector's (ATC) 2020-21 budget and will be included in future recommended budgets.

#### **BACKGROUND INFORMATION**

In February 2013, ATC implemented a Microsoft SharePoint (SharePoint) Enterprise system and selected KnowledgeLake, Inc. (KnowledgeLake) to provide its proprietary image-capturing software that was fully integrated with SharePoint. The SharePoint system allows document images to be shared across ATC, while KnowledgeLake software provides the tool for the ongoing capture, indexing, and retrieval of images.

In April 2020, ATC executed a strategy to strengthen its business functions and modernize its existing processes and supporting technologies to improve operations. This included migrating on-premise SharePoint Server to SharePoint Online, leveraging Microsoft O365. The on-premise SharePoint application is integrated with KnowledgeLake software to scan, capture, index, and retrieve documents.

The SharePoint migration was completed in August 2020, resulting in a temporary “hybrid” environment (both on-premise and cloud based). After migrating the SharePoint on-premise environment to SharePoint Online, the KnowledgeLake component needed to be addressed separately. The recommended agreement with KnowledgeLake will allow ATC to complete the required architecture in its cloud environment and continue business processes as they are today, reducing on-premise dependencies.

The KnowledgeLake Cloud Service Subscription Agreement is KnowledgeLake’s standard commercial agreement, which contains 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. The contract shall be governed by and construed in accordance with the laws of the State of Missouri.
  - The County standard contract requires California governing law.
  - Potential Impact: The contract will be interpreted under Missouri law. Any questions, issues or claims arising under this contract will require the County to hire outside counsel competent to advise on Missouri law, which may result in fees that exceed the total contract amount.
2. KnowledgeLake may assign the contract to a successor in interest without notice or County consent.
  - The County must approve any assignment of the contract.
  - Potential Impact: KnowledgeLake may assign the contract 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.
3. The prevailing party in any lawsuit is entitled to recover costs and 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: If either party institutes any legal proceedings related to the Agreement, the prevailing party will be entitled to recover reasonable attorneys’ fees, which could exceed the total contract amount. County Counsel cannot advise on, whether and to what extent, Missouri law may affect a party’s requirement to pay the prevailing party’s attorneys’ fees and costs.
4. County agrees to defend, indemnify and hold KnowledgeLake harmless for unaffiliated third party claims arising from County’s data or County’s use of the service.
  - The County standard contract does not include any indemnification or defense by the County of a Contractor.
  - Potential Impact: By agreeing to indemnify KnowledgeLake, 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 KnowledgeLake without such limitations and the County would be responsible to defend and reimburse KnowledgeLake for costs, expenses, and damages, which could exceed the total contract amount. County Counsel cannot advise on, whether and to what extent, Missouri law may limit or expand this contract term.
5. The contract does not require KnowledgeLake 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 contract does not include County standard insurance requirements. This means that the County has no assurance that KnowledgeLake 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.

6. Limitations of liability of both parties to the fees paid or payable by the County to KnowledgeLake in the 12 months prior to the event giving rise to the claim, excluding each party's indemnification obligations and County's breach of confidentiality, license restrictions or gross negligence.
  - 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, Missouri law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
7. Payment Terms are Net 30 with 1.5% per month late payment interest.
  - County standard payment terms are Net 60 days with no interest or late payment penalties.
  - Potential Impact: Failing to pay within 30 days of the invoice date will result in a material breach of the contract, which would allow KnowledgeLake to terminate the contract and seek other legal remedies, including charging the County interest at a rate of 1.5% per month (18% annually), which would exceed the contract amount.
8. The Agreement has an indefinite term that remains in effect for as long as there is an Order Form in effect
  - County Policy 11-06SP does not permit indefinite term or automatically renewing contracts unless approved by the Board.
  - Potential Impact: Additional orders, which may not be obvious as requiring Board approval, will extend the term of the Agreement. There is no end term to the contract and the County is indefinitely bound to the terms and conditions of the contract until all orders have been terminated or expired.
9. There is no termination for convenience. County may only terminate for KnowledgeLake's uncured breach or for lack of appropriation and allocation of funds upon notice to KnowledgeLake of loss of funding. In addition, the County agrees to a non-cancelable payment obligations and non-refundable fees.
  - The County standard contract gives the County the right to terminate the Contract, for any reason, with a thirty (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: There is no termination for convenience without penalty. Once placed the 24-month order is non-cancelable and fees paid are non-refundable. Any attempted termination prior to the end of the 24-month term or any subsequent annual term by County without cause would result in payment liability for the full contract amount, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.
10. Venue is in the Missouri state courts located in St. Louis County, Missouri or the jurisdiction of the United States District Court for the Eastern District of Missouri.
  - The County standard contract requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
  - Potential Impact: Having a venue in St. Louis County, Missouri may result in additional expenses that exceed the amount of the contract.

ATC recommends approval of the Software License Exchange Agreement, including the non-standard terms, to allow ATC the continued use of the KnowledgeLake software, as it has reduced the amount of manual document indexing previously required because of advanced technologies for capture. In addition, the advanced search capabilities of both KnowledgeLake software and SharePoint have aided in the efficient retrieval of documents. Finally, the cost associated with obtaining and implementing a different software solution makes it cost-effective to continue using the KnowledgeLake software.

## **PROCUREMENT**

On April 5, 2016 (Item No. 15), the Board authorized the Purchasing Agent to issue a blanket purchase order

(PO) to KnowledgeLake for support and maintenance of proprietary imaging software in an amount not to exceed \$47,421 for the period of March 1, 2016, to February 28, 2019. Subsequent POs were issued as follows:

PO Number	Term	Amount
4100075083	3/1/2019 - 2/29/2020	\$16,307.24
4100133518	3/1/2020 - 2/28/2021	\$16,307.24

The recommended agreement with KnowledgeLake will replace and supersede PO Number 4100133518. Since there are approximately three months remaining on the current PO, KnowledgeLake has agreed to refund ATC the prorated amount of \$4,077 for the balance of the agreement. Accordingly, the annual license fee of \$33,201 for the period of November 30, 2020, through November 29, 2021, has been discounted by the prorated cost of \$4,077, for an adjusted fee of \$29,124.

#### **REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5455) on October 13, 2020; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on October 23, 2020; Finance (Carl Lofton, Administrative Analyst, 387-5404) on October 30, 2020; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on October 30, 2020.