



# San Bernardino County

## Legislation Text

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**File #: 4916, Agenda Item #: 33**

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

**October 5, 2021**

#### **FROM**

**LARRY AINSWORTH, Chief Information Officer, Innovation and Technology Department**

#### **SUBJECT**

Non-Financial Service Agreement with Box, Inc. for Software Licensing, Support and Maintenance

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

Approve a non-financial Service Agreement with Box, Inc. for software licensing, support and maintenance of a document management system for a total contract period of three years from November 5, 2021, through November 4, 2024.

(Presenter: Larry Ainsworth, Chief Information Officer, 388-5501)

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

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

#### **FINANCIAL IMPACT**

Approval of the Service Agreement with Box, Inc. (Box) will not result in the use of Discretionary General Funding (Net County Cost). This Agreement is non-financial in nature and does not commit the County to make any purchases. If future purchases are made under this Agreement, the Innovation and Technology Department (ITD) will adhere to County purchasing policies and return to the Board of Supervisors for approval, if necessary.

#### **BACKGROUND INFORMATION**

ITD maintains Box enterprise software licenses to provide a document management system for use by multiple County departments to manage, secure, share and govern content, including documents, images and videos, such as Board meeting agendas and pictures.

The Box Service Agreement is Box's standard commercial contract, which includes 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 County is required to defend Box against any third-party claim that County content or County's use of the Box Service in breach of the Agreement, infringes a registered patent, registered trademark, or copyright, or misappropriates a trade secret, or in violation of Box's Acceptable Use Policy, and indemnify Box for the resulting costs and damages finally awarded against Box to such third party by a court of competent jurisdiction or agreed to in settlement.
  - The County standard contract does not include any indemnification or defense by the County of

a Contractor.

- **Potential Impact:** By agreeing to defend and indemnify Box, 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 Box without such limitations and the County would be responsible to defend and reimburse Box for costs, expenses, and damages, which could exceed the total contract amount.
2. The contract does not require Box to meet certain County standard insurance requirements pursuant to County Policy 11-07, including no severability of interests, no waiver of subrogation, no requirement to name the County as an additional insured, no requirement to declare deductibles over \$10,000, no remedy for Box's failure to provide the required insurance, and no insurance review.
- The County Policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and set forth in the County standard contract.
  - **Potential Impact:** The contract does not include County standard insurance requirements. This means that the County has no assurance that Box 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.
3. Box's total and cumulative liability to the County for all claims arising out of the contract is the total fees paid by the County in the 12 months prior to the event giving rise to the claim, except for claims of death or personal injury caused by Box's negligence.
- The County standard contract does not include a limitation of liability.
  - **Potential Impact:** Claims, including indemnification obligations, could exceed the liability cap and the contract amount leaving the County financially liable for the excess. In addition, the County's liability under the contract is not similarly limited.
4. There is no termination for convenience
- 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:** County can only terminate the contract during the term of an uncured breach by Box. Any attempted termination 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.

ITD recommends approval of the Service Agreement, including the non-standard terms which are typical in the IT industry, and recommends utilizing Box's document management system due to the cost and complexity of developing, supporting and maintaining an in-house developed document management system.

## **PROCUREMENT**

The Service Agreement, 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.

## **REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5455) on August 31, 2021; Purchasing (Michael Candelaria, Lead Buyer III, 387-0321) on September 1, 2021; and Finance (Sofia Almeida, Administrative Analyst, 387-43782) on September 17, 2021; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on September 20, 2021.