San Bernardino County

Legislation Text

File #: 5161, **Agenda Item #:** 24

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

December 7, 2021

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

SUBJECT
Apache License Agreement for Software Platforms

RECOMMENDATION(S)
1. Approve Apache License Agreement, version 2.0, dated January 2004, in the English language including non-standard terms, for software platforms to run, copy, distribute, study, change and improve software packages and other kinds of works for future licensing needs.
2. Authorize the Chief Information Officer, or Designee, to electronically accept licenses under the Apache License Agreement for the Innovation and Technology Department, subject to review by County Counsel.
(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 Apache License Agreement will not result in the use of Discretionary General Funding (Net County Cost). The Apache License Agreement is non-financial in nature and does not commit the County to make any purchases. If future purchases are made in conjunction with the Apache License, 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 Apache Software Foundation (ASF) is a U.S. non-profit public charity <https://www.apache.org/foundation/>. The Foundation is governed by a Board of Directors <https://www.apache.org/foundation/governance/>, elected by its Membership, and publishes monthly board meeting minutes <https://www.apache.org/foundation/board/calendar.html>. ITD utilizes multiple software platforms such as WordPress, Amazon Web Services (AWS), and Cisco systems, which incorporate software licensed under the Apache license for service functionality. The Apache 2.0 License is an open-source license that is widely used in web servers and web services integrated in applications that display a web page for access to the applications. ASF's corporate bylaws explicitly state that Apache projects create "open-source" software for distribution to the public at no charge <http://www.apache.org/foundation/bylaws.html>.

The Apache License does not include any County standard terms and omits certain required terms, including indemnity and insurance provisions required under County Policy 11-07. Content is licensed "AS IS" without

warranty of any kind at the County's sole risk of loss and requires an absolute waiver of all civil liability in connection with the licensed program. In some cases, it may not even be possible to identify the originator of the code, there may be multiple parties responsible for developing the code, and the authors of the code could be located anywhere throughout the world. If an issue arises, these factors make it nearly impossible for the County to seek reimbursement for any losses, even without the warranty and liability waivers.

Since source code and object code versions of software licensed through Apache are intended to be freely distributable, developers that use Apache assert copyright on the software, and give the licensee legal permission to copy, distribute and/or modify it. For the sake of both authors and users, Apache requires that modified versions be marked as changed so that any errors experienced after the version has been modified will not be attributed erroneously to authors of previous versions. Although challenges to this licensing scheme have been successful in various jurisdictions, there is no direct indemnity from the copyright owner to the County. In some cases, it may not even be possible to identify the originator of the code, so if an issue arises, the County assumes all risk and responsibility of defending an infringement claim.

ITD recommends approval of the Apache License Agreement, version 2.0, including the non-standard and omitted County standard terms, to allow ITD to license software platforms which use Apache in source and object code, including WordPress platform for web content creation and application management, AWS on demand cloud computing platform and application programming interface, and Cisco systems, which utilize enterprise security software products, per County procurement policy.

PROCUREMENT
The Apache License 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 October 21, 2021; Purchasing (Michelle Churchill, Supervising Buyer, 387-2070) on November 10, 2021; Finance (Sofia Almeida, Administrative Analyst, 387-4378) on November 15, 2021; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on November 18, 2021.