



# San Bernardino County

## Legislation Text

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**File #: 6197, Agenda Item #: 35**

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

**June 14, 2022**

#### **FROM**

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

#### **SUBJECT**

Agreement with Apple Inc. for Mobile Device Management

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

1. Approve Business Manager Agreement, including non-standard terms, with Apple Inc., to be accepted electronically for software that enables the Innovation and Technology Department to make future purchases in amounts authorized by County Policy to enroll, manage content and support Apple-branded devices operating in a Mobile Device Management environment within the County, effective as of the date the Business Manager Agreement is accepted electronically and automatically renewing for successive one-year periods until terminated by either party.
2. Designate the Chief Information Officer, Assistant Chief Information Officer, or IT Division Chief, to electronically accept the Business Manager Agreement with Apple Inc. and electronically accept updates to the terms to the agreement and any applicable licenses, subject to review by County Counsel, provided that such updated terms and applicable licenses do not substantively modify the terms of the original agreement accepted by the County.
3. Direct the Chief Information Officer to transmit printed copies of any updated terms to the agreement and any applicable licenses that are electronically accepted by Chief Information Officer, Assistant Chief Information Officer, or IT Division Chief to the Clerk of the Board of Supervisors within 30 days of electronic acceptance.

(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 this item will not result in the use of Discretionary General Funding (Net County Cost). The Business Manager Agreement (Agreement) is non-financial in nature for the management of content and support of Apple-branded devices.

#### **BACKGROUND INFORMATION**

Apple Business Manager (ABM) is a platform for Apple device deployment which integrates into the County's Mobile Device Management (MDM) solution for the centralized management of County-owned devices across departments. This platform enables the Innovation and Technology Department (ITD) to fully manage iPhone Operating System (IOS) devices.

The Agreement is Apple's standard commercial contract, as negotiated between the parties, which includes terms that differ from the standard County contract and omits certain County standard contract terms. While the parties negotiated certain contract terms to County standards, Apple would not agree to all County standard terms. The non-standard missing terms include the following:

1. Apple may assign the Agreement without notice to the County and without the County's approval.
  - The County standard contract requires approval of any assignment of the Agreement.
  - **Potential Impact:** Apple could assign the Agreement 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. Should this occur, the County would be out of compliance with the law until it becomes aware of the assignment and terminates the Agreement.
2. The Agreement does not require Apple to indemnify the County, including for intellectual property infringement claims.
  - The County standard contract 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. 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.
  - **Potential Impact:** Apple is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from Apple'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 Apple's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount.
3. To the extent permitted by applicable law, the County agrees to defend, indemnify and hold Apple harmless, from claims, and costs incurred by Apple Indemnified Party and arising from (a) the County's breach of any certification, covenant, obligation, representation or warranty; (b) the County's use (including but not limited to County's Service Provider's, Administrators', Authorized Users', Permitted Users', and/or Permitted Entity's use) of the Service; (c) any claims about the County's use, deployment or management of Authorized Devices, Device Enrollment Settings, and/or MDM Servers; (d) any claims about the provision, management, and/or use of Authorized Devices, Administrator accounts, Managed Apple IDs, or Content, and/or any other use of the Service; and/or (e) any claims regarding the County's use or management of Personal Data.
  - The County standard contract does not include any indemnification or defense by the County of a Contractor.
  - **Potential Impact:** By agreeing to indemnify Apple, 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 Apple without such limitations and the County would be responsible to defend and reimburse Apple for costs, expenses, and damages, which could exceed the total Agreement amount.
4. The Agreement does not require Apple to meet the County's insurance standards as required pursuant to County Policy 11-07.
  - 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 Agreement does not include County standard insurance requirements. This

means that the County has no assurance that Apple 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 Agreement amount.

5. Apple's total liability to the County for all claims, except personal injury, is limited to \$50.
  - The County standard contract does not include a limitation of liability.
  - Potential Impact: Claims could exceed the liability cap and the Agreement amount leaving the County financially liable for the excess. In addition, the County's liability under the Agreement is not similarly limited.
6. The term of the Agreement is automatically renewing on an annual basis until terminated by either party.
  - County Policy 11-06SP does not permit indefinite term or automatically renewing contracts unless approved by the Board.
  - Potential Impact: There is no end term to the Agreement and the County is indefinitely bound to the terms and conditions of the Agreement until terminated by either party as permitted under the Agreement.
7. Venue is in the federal court within the Northern District of California.
  - The County standard contract requires venue for disputes in Superior Court of California, San Bernardino County, San Bernardino District.
  - Potential Impact: Having a venue in the federal court in the Northern District of California may result in additional expenses that exceed the amount of the Agreement.
8. To the maximum extent permitted by applicable law, the service is provided "as is" and "as available" with all faults and without warranty of any kind.
  - There is no warranty requirement in the County standard contract. The County expects its vendors and service providers to fully warrant the products and services provided to the County.
  - Potential Impact: The County's use of the software is solely at its own risk.

ITD recommends approval of the Agreement with Apple, including the non-standard terms, to allow the deployment and management of County owned Apple-branded devices. The designation of the Chief Information Officer, Assistant Chief Information Officer, or IT Division Chief as the authority to electronically accept the Agreement for ITD and electronically accept updates to the terms of the Agreement and any applicable licenses, subject to review by County Counsel, provided that such updated terms and applicable licenses do not substantively modify the Agreement, is necessary as they represent the assigned staff with access to download, install, and accept the software licensing terms.

## **PROCUREMENT**

Apple is the only company that provides the Apple Business Manager device management software for use in a MDM environment developed for Apple branded devices. Purchasing concurs with this non-competitive justification. The Agreement, including non-standard terms, will be used to enroll, manage content, and support future purchase orders for Apple-branded devices, 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 May 16, 2022; Purchasing (Tevan Stremel, Buyer III, 387-2098) on May 10, 2022; Risk Management (Victor Tordesillas, Director, 386-8623) on May 20, 2022; Finance (Sofia Almeida, Administrative Analyst, 387-5402) on May 30, 2022; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on May 30, 2022.