



# San Bernardino County

## Legislation Text

**File #: 7064, Agenda Item #: 60**

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

**November 15, 2022**

#### **FROM**

**BRENDON BIGGS, Director, Department of Public Works - Solid Waste Management**

#### **SUBJECT**

Agreement with Paradigm Software, L.L.C. for Compu/WeighStation System

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

1. Approve the Platinum Support Services and Licensing Agreement, including non-standard terms, with Paradigm Software, L.L.C. for the renewal of maintenance, support services, and licensing for the Compu/WeighStation system, and the lease of additional Payment Card Industry/Europay, Mastercard, Visa compliance hardware, software, maintenance and support service, for the period of December 1, 2022 through November 30, 2027, in the amount of \$871,664.
  2. Authorize the Director of the Department of Public Works to approve an additional 10% of the annual estimated total each year in additional purchase orders to accommodate new service requests for unforeseen enhancements, upon review by County Counsel.
- (Presenter: Brendon Biggs, Director, 387-7906)

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

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

**Ensure Development of a Well-Planned, Balanced, and Sustainable County.**

#### **FINANCIAL IMPACT**

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The Department of Public Works - Solid Waste Management Division (SWMD) is financed by fee revenue. SWMD establishes fees that are charged to the public and other agencies for utilization of the County Waste Disposal System. Sufficient appropriation and revenue exist within SWMD's 2022-23 budget to fund the current year's portion of these products and services and will be included in future recommended budgets.

<b><i>Fiscal Year</i></b>	<b>2022-23</b>	<b>2023-24</b>	<b>2024-25</b>	<b>2025-26</b>	<b>2026-27</b>	<b><i>Total</i></b>
Tech Support & Maintenance	\$166,125	\$169,447	\$172,836	\$176,293	\$179,819	\$864,520
Initial Hardware & Software /Setup Fees	0	0	0	0	\$7,144	\$7,144
Annual Totals	\$166,125	\$169,447	\$172,836	\$176,293	\$186,963	\$871,664

**BACKGROUND INFORMATION**

The County currently utilizes the Compu/WeighStation system from Paradigm Software, L.L.C. (Paradigm) for weigh station data management at SWMD landfills. The Compu/WeighStation software application is a proprietary and specialized data management system, recognized as one of the premier weigh station data management systems in the industry, and is in use at all of the County's landfill and transfer station operations. Use of the Compu/WeighStation system is critical to meeting SWMD's requirement of timely processing accurately weighed and priced waste disposal transactions, along with performing primary data management and reporting functions. Annually, SWMD processes approximately 670,000 transactions through this system and is able to provide accurate and timely scale tickets, monthly billing details, and tonnage reporting.

The County also requires compliance with Payment Card Industry (PCI) Standards to protect the customer's payment card account data. Currently, the County accepts credit card payments by Industry/Europay, Mastercard, and Visa. Paradigm provides leased credit card equipment, technical support, and maintenance of the hardware to comply with PCI Standards.

The current Standard Support Service and Licensing Agreement No. 19-763, approved by the Board of Supervisors (Board) on November 19, 2019 (Item No. 27), for software, hardware, licensing, maintenance and support services with Paradigm for the Compu/WeighStation system, is set to expire on November 30, 2022. SWMD is now seeking a new term for these and additional services. Approval of this item will allow SWMD to continue to utilize the Compu/WeighStation system from Paradigm by agreeing to Paradigm's Platinum Support Services and Licensing Agreement (Agreement) for a new term of December 1, 2022 through November 30, 2027. Further, approval of this item will enable Paradigm to provide software updates, maintenance and technical support services. Allowing for a 10% contingency will assist SWMD to enhance the Compu/WeighStation system as unanticipated, up-to-date information technology solutions become available.

Paradigm's Support Services and License Agreement includes terms that differ from the standard County contract and omit certain County standard language. The non-standard and missing terms include the following:

1. Confidentiality. County is obligated not to disclose the information claimed by Paradigm to be its confidential information, including the Agreement.
  - The County standard contract does not require the County to maintain the confidentiality of a contractor's information.
  - Potential Impact: The County is obligated to maintain the confidentiality of information that Paradigm deems confidential. The County will need to be aware of its obligation to notify Paradigm prior to any disclosure, including in response to a Public Records Act request. The County may incur liability from failing to disclose information pursuant to a California Public Records Act request or open public meetings requirements (Brown Act and County Sunshine Ordinance). In addition, the County could be deemed in breach of contract and incur liability to Paradigm for disclosure of Paradigm's information, regardless of whether the disclosure is intentional or inadvertent, which could exceed the Agreement amount.
2. Insurance. The Agreement does not require Paradigm to meet the County's insurance standards.
  - 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 Agreement does not include County standard insurance requirements. This means that the County has no assurance that Paradigm 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. **Limitation of Liability.** Limitation of Paradigm's total aggregate liability for consequential, special, incidental, punitive or indirect damages shall not exceed the amount paid for the support services during the one-year period prior to the date on which the claim arises and any cause relating to the licensing and system implementation will not exceed the total amounts paid for services. For claims arising out of the failure of performance of the credit card processing gateway product and service, Paradigm's liability shall not exceed the amount paid for the services during the three months prior to the first occurrence giving rise to the claim for liability.
  - The County Standard contract does not include a limitation of liability.
  - Potential Impact: Claims could exceed the liability cap and the Agreement amount, over and outside of Paradigm's general liability insurance and indemnification, leaving the County financially liable for the excess.
4. **Indemnification by Vendor.** The Agreement limits the indemnification obligations owed by Paradigm to County to any claim that the Software infringes on a U.S. copyright, a U.S. patent issued as of the effective date of this Agreement, or a trade secret.
  - The County standard contract indemnity provision requires the vendor/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: Paradigm is not required to defend, indemnify, or hold the County harmless from any claims other than claims for software infringement on a U.S. copyright, a U.S. patent issued as of the effective date of this Agreement, or a trade secret. If the County is sued for any other such claim, based on the use of Paradigm's software and hardware, the County may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount.
5. **Dispute Resolution.** The Agreement states that in the event of a dispute regarding the Source Code, the Escrow Agent will withhold the code until the disagreement is resolved through (i) a legal action or (ii) by mutual agreement to submit the dispute to an arbitrator under the rules of the American Arbitration Association, or (iii) by written settlement.
  - County Policy is for each party to use their best efforts to settle the dispute through negotiation.
  - Potential Impact: Agreement with these terms might result in a civil lawsuit or alternative dispute resolution and the associated costs and exposure to liability.
6. **Disclaimer and Limitation of Warranties.** The Agreement includes a limited warranty. Paradigm does not warranty the software or the documentation is free of errors or defects or that it meets County requirements. Paradigm warrants only that the software will perform functions as described in its associated documentation for a period of sixty (60) days from the date of delivery. Paradigm does not make a warranty as to the hardware and there is an express provision that no warranties have been made.
  - There is no warranty requirement in the County standard contract but the County expects its product and service providers to fully warrant the products and services they provide.
  - Potential Impact: The County's use of the software is solely at its own risk, outside of the sixty (60) day warranty period.

SWMD recommends approval of the Agreement, including the non-standard terms, to acquire a new term of license of the software, services and support, and orders as necessary, for the continued utilization of the Compu/WeighStation system to assist SWMD in its critical weigh station operations in providing waste disposal services to County residents. Approval of this item will assist the County with maintaining an effective waste management system operating in a fiscally responsible and business-like manner.

## **PROCUREMENT**

The Compu/WeighStation software application is a proprietary and specialized data management system. Paradigm, the system developer, is the only authorized provider for maintenance and support services. In

order to ensure the continuity of its operations and business processes, SWMD is recommending approval of this non-competitive agreement to procure the product and service described herein.

In accordance with County Policy 11-06SP1 Section E, the maximum contract term is five years, including the initial term and any renewals. Contracts exceeding a five-year term may be approved by the Board. The most recent approval by the Board was on November 19, 2019 (Item No. 27) for the period ending November 30, 2022.

The Purchasing Department concurs with the non-competitive procurement based on Paradigm being the sole source for procurement of Compu/WeighStation.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Aaron Gest and Maria Insixiengmay, Deputies County Counsel, 387-5455) on October 12, 2022; Purchasing (Jason Cloninger, Lead Buyer, 387-8258) on October 19, 2022; Risk Management (Victor Tordesillas, Director, 386-8623) on October 19, 2022; Finance (Carl Lofton, Administrative Analyst, 387-5404) on October 30, 2022; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on October 31, 2022.