

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

September 10, 2024

FROM

Tracy Reece, Chief Probation Officer, Probation Department

SUBJECT

Subscription Agreement for State/Local Government with LexisNexis, a division of RELX Inc. for Law Library Access

RECOMMENDATION(S)

Approve **Subscription Agreement No. 24-822** for State/Local Government, including non-standard terms, with LexisNexis, a division of RELX Inc., for three licenses to access and use the California National Government Package, Criminal Law Library, for purchase amounts as authorized by County Policy, for the period of October 1, 2024 to September 30, 2025, automatically renewing on an annual basis, until terminated by either party.
(Presenter: Tracy Reece, Chief Probation Officer, 387-5692)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

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 Subscription Agreement (Agreement) for State/Local Government will apply to purchase orders on an automatically renewing basis, with the first order in the amount of \$4,968. If purchases are made under the Agreement, the Probation Department's (Department) will adhere to County purchasing policies and return to the Board of Supervisors for approval, if needed. Adequate appropriation has been included in the Department's 2024-25 budget.

BACKGROUND INFORMATION

LexisNexis provides a proprietary program designed to provide researching capabilities for the Department to conduct legal research and evaluate case laws. This program, a non-transferable licenses to access and use the California National Government Package, Criminal Law Library, and the materials available therein, will be used by the Department as a tool to ensure the Department's Policies and Procedures align with regulations and best practices to reduce liability.

The Subscription Agreement for State/Local Government, including the General Terms and Conditions and the Pricing Schedule (collectively, the Agreement) is LexisNexis' standard contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. LexisNexis is unwilling to negotiate these terms. The non-standard and missing terms include the following:

**Subscription Agreement for State/Local Government with LexisNexis, a
division of RELX Inc. for Law Library Access
September 10, 2024**

1. G

governing law is the State of New York.

 - The County standard contract requires California governing law.
 - Potential Impact: The Agreement will be interpreted under New York law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on New York law, which may result in fees that exceed the total Agreement amount.

2. L

LexisNexis may assign the Agreement without notice to the County and without the County's approval.

 - The County standard contract requires that the County must approve any assignment of the contract.
 - Potential Impact: LexisNexis 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 could be out of compliance with the law until it becomes aware of the assignment and terminates the Agreement. County Counsel cannot advise on whether, and to what extent, New York law may permit or restrict a party's right to assign without an express provision in the Agreement.

3. T

There is no provision in the Agreement addressing each party's responsibility for paying 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: County Counsel cannot advise on whether, and to what extent, New York law may affect a party's requirement to pay the prevailing party's attorneys' fees and costs in a legal action where no specific provision is provided in the Agreement.

4. T

The Agreement does not require LexisNexis to meet the County's insurance standards as required pursuant to County Policies, 11-05, 11-07 and 11-07SP.

 - County policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and as set forth in the County policy and in the County standard contract.
 - Potential Impact: The County has no assurance that LexisNexis will be financially responsible for claims that may arise under the Agreement, which could result in expenses to the County that exceed the total Agreement amount.

5. LexisNexis' maximum liability to the County is limited to the lesser of the County's actual damages or the amount paid by the County for the services in the 12 months immediately before the claim arises, without any exceptions.
 - 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. County Counsel cannot advise on whether, and to what extent, New York law may limit or expand the exclusion of limits to the extent prohibited by applicable law.

6. The County may not terminate the Agreement for convenience.

**Subscription Agreement for State/Local Government with LexisNexis, a
division of RELX Inc. for Law Library Access
September 10, 2024**

- County Policy 11-05 requires that the County have the right to terminate the contract, for any reason, with a 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: The County can only terminate the Agreement during the term for an uncured breach by LexisNexis. Any attempted termination by the County without cause could result in payment liability for the full Agreement amount, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.
7. There is no stated venue in the Agreement.
- County Policy 11-05 requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: LexisNexis is located in New York, New York. Having no express venue in the Agreement means that New York venue could be applied to disputes arising under this Agreement, which may result in additional expenses that exceed the amount of the Agreement.

The Department recommends approval of the Agreement with LexisNexis, including the non-standard terms, to ensure that the Department's policies and procedures align with regulations and best practices to reduce liability.

PROCUREMENT

LexisNexis provides proprietary software for legal research and case law evaluations that specifically provide in-depth legal content and analysis needed for research and case law evaluations that meet the needs of the Department. The Purchasing Department supports this non-competitive procurement based on the proprietary nature of the software and the Department's previous subscription with LexisNexis.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on August 9, 2024; Risk Management (Loretta Acuna, Staff Analyst II, 386-9039) on August 9, 2024; Purchasing (Ariel Gill, Supervising Buyer, 387-2070) on August 15, 2024; Finance (Iliana Rodriguez, Administrative Analyst, 387-4205) on August 23, 2024; and Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on August 23, 2024.

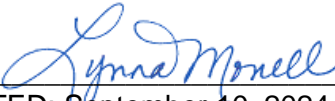
**Subscription Agreement for State/Local Government with LexisNexis, a
division of RELX Inc. for Law Library Access
September 10, 2024**

Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Joe Baca, Jr.
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: September 10, 2024



cc: Probation - Martin w/agree
Contractor - c/o Probation w/agree
File - w/agree
CCM 09/11/2024