

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

June 25, 2024

FROM

LUTHER SNOKE, Chief Executive Officer, County Administrative Office

SUBJECT

Subscription Agreement with Pagefreezer Software, Inc. for Social Media Archiving Services

RECOMMENDATION(S)

1. Approve the **Subscription Agreement No. 24-574** with Pagefreezer Software, Inc., including non-standard terms, to provide public records compliance for social media archiving services in an amount not to exceed \$15,158, for the retroactive period of May 22, 2024 through May 21, 2025, with automatic annual renewals thereafter, unless canceled by either party with at least 30 days written notice prior to the end of the then annual term.
2. Authorize the Purchasing Agent to execute renewals of the Subscription Agreement with Pagefreezer Software, Inc., including non-standard terms, for up to four annual renewals from May 22, 2025 through May 21, 2029, to confirm the commencement and end dates of each such annual renewal, and any annual cost increase, which shall not to exceed 10% of the prior year's cost, for an additional amount not to exceed \$77,383, for said four-year period, subject to County Counsel review .
3. Authorize the Purchasing Agent, in consultation with the Chief Communications Officer, to deliver a cancellation notice to Pagefreezer Software, Inc. in the event of a desired termination of the automatic renewal of the Subscription Agreement with Pagefreezer Software, Inc., subject to County Counsel review.
4. Direct the Chief Communications Officer to transmit all renewals of the Subscription Agreement and any termination notice executed by the Purchasing Agent to the Clerk of the Board of Supervisors within 30 days of execution.

(Presenter: Martha Guzman-Hurtado, Chief Communications Officer, 387-4193)

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 additional Discretionary General Funding (Net County Cost). The cost of the Subscription Agreement (Agreement) with Pagefreezer Software, Inc. (Pagefreezer), for the term of May 22, 2024 through May 21, 2025, is \$15,158. The annual cost for each automatically recurring annual term may increase by up to 10% per year, provided the Purchasing Agent shall have the authority to execute Agreement renewals through May 22, 2029, for an additional cost of up to \$77,383, for a total aggregate cost of up to \$92,541, for the five year period. Sufficient appropriation for the cost of this Agreement is included in the County Administrative Office's (CAO) 2024-25 budget and will be included in future recommended budgets.

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Year	Not to Exceed Cost
Year 1 (2024-25)	\$15,158
Year 2 (2025-26)	\$16,674
Year 3 (2026-27)	\$18,341
Year 4 (2027-28)	\$20,175
Year 5 (2028-29)	\$22,193
Total	\$92,541

BACKGROUND INFORMATION

Pagefreezer captures, preserves, and archives the content of social media accounts, including posts, images, and comments, as they are disseminated. San Bernardino County (County) has a need to archive the content from its social media accounts in order to comply with potential public records requests, subpoenas, court orders, and other similar demands. Social media services utilized by the County, namely X, Facebook, Instagram, and YouTube, are not obligated to, and often do not, preserve all content that could be needed by the County to comply with legal demands for public records. County Policy 09-04, Standard Practice 09-04SP1, requires the County to retain social media content “in accordance with the California Public Records Act and all County policies and codes pertaining to record management, maintenance, and retention, and shall be accessible in response to requests for information.”

This item will approve the Agreement with Pagefreezer, including non-standard terms, for social media archiving services, for the period of May 22, 2024 through May 21, 2025, in the amount of \$15,158 with automatic annual renewals thereafter, unless canceled by either party with at least 30 days written notice prior to the end of the then annual term. This item is being presented at this time, as this is the first available date following the required operational, fiscal, and legal reviews.

The item will also authorize the Purchasing Agent to execute annual renewals of the Subscription Agreement, including non-standard terms, for the period of May 22, 2025 through May 21, 2029, to confirm the commencement and end dates of each such annual renewal, and any annual cost increase for said four-year period.

The item further authorizes the Purchasing Agent, in consultation with the Chief Communications Officer, to deliver a cancellation notice to Pagefreezer in the event of a desired termination of the automatic renewal of the Agreement given that such notice would need to be delivered no later than 30 days prior to the end of the then existing term.

Per County Policy 11-05, contracts containing non-standard terms must be approved by the Board of Supervisors (Board).

This Agreement contains Pagefreezer’s standard terms for government users, which includes terms that differ from the standard County contract and omits certain County standard terms. Pagefreezer is unwilling to negotiate these terms. The non-standard and missing terms include the following:

1. The term of the Agreement is indefinite.

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- County Policy 11-04 does not permit an indefinite term or automatically renewing contracts unless approved by the Board.
 - Potential Impact: The Agreement automatically renews for successive one-year periods and the County is indefinitely bound to the terms and conditions of the Agreement unless the County cancels the Agreement by giving not less than 30 days written notice prior to the end of the then existing term.
2. The payment terms are net 30 days with interest of 1.5% per month or the maximum rate permitted by law, whichever is lower, for overdue payments.
 - County standard payment terms are net 60 days with no interest or late payment penalties.
 - Potential Impact: County standard processing time is 60 days or more. The County would incur an interest penalty of 1.5% monthly, or the maximum rate permitted by law, whichever is lower, for failing to pay within 30 days after the invoice date. Pagefreezer may also accelerate all amounts due under the Agreement, suspend services, terminate the Agreement, and seek damages and other legal remedies, which could exceed the contract amount.
 3. The County will indemnify, defend and hold Pagefreezer harmless for claims arising out of the County's data or use of Pagefreezer's service that infringes on or misappropriates the intellectual property right of a third party or violates applicable laws.
 - The County standard contract does not include any indemnification or defense by the County of a Contractor.
 - Potential Impact: By agreeing to indemnify Pagefreezer, 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 Pagefreezer without such limitations and the County would be responsible to defend and reimburse Pagefreezer for costs, expenses, and damages, which could exceed the total contract amount.
 4. The Agreement does not require Pagefreezer to meet the County 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 Pagefreezer 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.
 5. Pagefreezer disclaims the warranty of non-infringement.
 - There is no warranty requirement in the County standard contract.
 - Potential Impact: The disclaimer of a warranty of non-infringement means that, should the County be sued for intellectual property infringement based on its use of Pagefreezer's software or services, the County will be liable for the costs of defense and damages, to the extent not covered by Pagefreezer's indemnity obligation.
 6. Pagefreezer limits its liability to the County to a maximum aggregate liability of the total amount paid by County in the 12 months preceding the last event giving rise to the liability. Claims must be commenced no later than 6 months after the day on which the claim is discovered or ought to have been discovered.

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- The County standard contract does not include a limitation of liability.
 - Potential Impact: Pagefreezer caps its liability to the County at the amount paid by County in the 12 months preceding the last event giving rise to the liability for all claims arising under the Agreement. Claims 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.
7. The County may not terminate the Agreement for convenience except 30 days prior to each successive annual renewal. In addition, the County agrees to a noncancelable payment obligation and non-refundable fees.
- The County standard contract gives the County the right to terminate the Agreement, 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: There is no termination for convenience. Unless the County terminates due to Pagefreezer's default, the County would be in default under the Agreement and subject to damages that could exceed the total contract amount.
8. Pagefreezer may change the Terms and Conditions with notice at any time.
- The County standard contract requires that any changes to the contract to be reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.
 - Potential Impact: Pagefreezer may change the Terms and Conditions with notice at any time, which shall be effective 30 days after notification. County shall be deemed to have accepted the Terms and Conditions if the County does not cancel the Agreement. The County could be agreeing to new terms without review by anyone, including County Counsel, and without the approval of the new terms by the Board.
9. Pagefreezer may assign the Agreement to any successor or affiliate without notice to the County and without the County's approval.
- The County must approve any assignment of the contract.
 - Potential Impact: Pagefreezer may assign the contract to a successor or affiliate without notice to the County and without the County's approval. This could allow the contract to be assigned to a business with which the County is legally prohibited from doing business with due to issues of Federal debarment or suspension and conflict of interest, without the County's knowledge.
10. The Agreement does not address attorneys' fees and costs.
- The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: There is no provision in the Agreement addressing each party's responsibility for paying attorneys' fees.

PROCUREMENT

This Agreement is non-competitive based on functional specifications as it is the current platform in use and, as such, hosts historical data related to Public Record Requests received by the County. Continuing services with Pagefreezer will ensure that the County maintains continuity of services. The Purchasing Department supports the non-competitive procurement for services with Pagefreezer.

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REVIEW BY OTHERS

This item has been reviewed by County Counsel (Agnes Cheng, Deputy County Counsel, 387-5455) on June 13, 2024; Purchasing (Ariel Gill, Supervising Buyer, 387-2070) on June 12, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst II, 386-9008) on June 14, 2024; Finance (Erika Rodarte, Administrative Analyst, 387-4919) on June 12, 2024; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on June 12, 2024.

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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: June 25, 2024



cc: CAO - Wert w/agree
Contractor - c/o CAO w/agree
File - w/agree
CCM 07/11/2024