

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

January 13, 2026

FROM

LEONARDO GONZALEZ, Director, Human Resources

SUBJECT

Non-Financial Terms of Service Agreement with Venngage Inc. for Infographics and Visual Content Software

RECOMMENDATION(S)

Approve a non-financial Terms of Service **Agreement No. 26-38** with Venngage Inc., including non-standard terms, for infographics and visual content software, effective January 13, 2026, and continuing until canceled by the County or terminated by Venngage Inc. (Presenter: Leonardo Gonzalez, Director, 387-5565)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

FINANCIAL IMPACT

Approval of this item does not require the use of additional Discretionary General Funding (Net County Cost). The Venngage Inc. (Venngage) Terms of Service Agreement (Agreement) is non-financial in nature and does not commit the County to make any purchases. When future purchases are made under this Agreement, County purchasing policies will be adhered to, and the Human Resources Department (HR) will return to the Board of Supervisors (Board) for approval, if necessary.

BACKGROUND INFORMATION

HR is responsible for developing and communicating key employee materials such as reports, organizational charts, training resources, policy updates, and engagement initiatives. Currently, these materials are created using standard office tools, which limit design flexibility, visual appeal, and efficiency. As a result, HR staff spend significant time formatting documents and presentations that could be more effectively produced with a visual communication tool. Implementing Venngage, a user-friendly infographic and design platform, would enable the HR team to create professional-quality visuals quickly and consistently, enhancing internal communications, employee engagement, and data presentation across the organization. Also using Venngage will be used in creating marketing materials and forms that meet the American with Disabilities Act (ADA) accessibility standards and help ensure compliance.

Venngage is headquartered in Canada, with no apparent presence within the United States, and the Agreement is silent on governing law. County Counsel is unable to approve the Agreement as to legal form because County Counsel is not sufficiently knowledgeable about the

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requirements for forming an enforceable Agreement under Canadian law. The non-standard terms in this contract include:

1. The Agreement is silent on either party's ability to assign the Agreement.
 - The County standard contract requires that the County must approve any assignment of the contract.
 - Potential Impact: Venngage 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 Canadian law may permit or restrict a party's right to assign without an express provision in the Agreement.
2. 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, Canadian 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.
3. The Agreement is silent on governing law
 - The County standard contract requires California governing law.
 - Potential Impact: Venngage is headquartered in Canada, with no apparent presence within the United States, and the Agreement is silent on governing law. County Counsel is unable to advise on the effect of remaining silent on governing law because County Counsel is not sufficiently knowledgeable about the requirements under Canadian law.
4. The Agreement does not require Venngage to indemnify the County, as required by County Policies 11-05 and 11-07, 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: County Counsel cannot advise on whether and to what extent Canadian law may allow the County to require Venngage to defend or indemnify it absent an express provision in the Agreement. If the County is sued for any claim, including intellectual property infringement based on its use of Venngage's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount.

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5. The County is required to indemnify Venngage against all liability to third parties, including any clients, the Canadian government, and provincial taxing authorities relating to: (1) County content and designs, (2) County's breach of the agreement, and (3) County's use of the services including in combination with any third-party software, application or service.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: County Counsel cannot advise on, whether and to what extent, Canadian law may limit or expand this Agreement term. By agreeing to indemnify Venngage, 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 Venngage without such limitations and the County could be responsible to defend and reimburse Venngage for costs, expenses, and damages, which could exceed the total Agreement amount.
6. The Agreement does not require Venngage 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 County policy and in the County standard contract.
 - Potential Impact: The County has no assurance that Venngage 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. County Counsel cannot advise on whether and to what extent Canadian law may require insurance coverage without an express provision in the Agreement.
7. Venngage's maximum liability to the County is limited to the total amount of fees paid under the contract.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: V 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, Canadian law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
8. There is no termination for convenience. The Agreement may only be canceled prior to the next automatic renewal.
 - The County standard contract gives the County 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: County Counsel is unable to advise on automatically renewing contracts and termination rights under Canadian law.
9. 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: Venngage is headquartered in Canada, with no apparent presence within the United States, and the Agreement is silent on governing law. Having no express venue in the Agreement means that Canadian venue could

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be applied to disputes arising under this Agreement, which may result in additional expenses that exceed the amount of the Agreement.

10. Venngage provides the services and/or products “AS IS” and disclaims all warranties of any kind.
- County Policy 11-05 requires a contractor to fully warrant its services and products.
 - Potential Impact: The County’s use of the services and/or products is solely at its own risk. County Counsel cannot advise on, whether and to what extent, Canadian law may limit or expand the disclaimers of warranty to the extent prohibited by applicable law.

HR recommends approval of the Agreement with Venngage, including non-standard because the acquisition of Venngage is essential to improve the quality, consistency, and efficiency of HR’s communications and reporting. Venngage will allow HR staff to create visually engaging infographics, dashboards, organizational charts, and training materials that clearly present data and initiatives to employees and leadership. This tool will reduce the time spent designing materials manually, increase the visual impact of HR communications, and promote better understanding of complex information such as workforce metrics, survey results, and policy updates. Additionally, the use of Venngage aligns with the department’s goal to enhance transparency, employee engagement, and data-driven decision-making through clear and accessible visual communication.

PROCUREMENT

The recommended contract is the result of a non-competitive procurement. Pursuant to County Policy 11-04, non-competitive procurements with a total contract value under \$200,000 may be approved by the Purchasing Agent. However, this software subscription agreement is being presented to the Board for approval due to the presence of non-standard and incomplete contract terms, as well as the application of foreign law. Incomplete terms refers to material provisions that are missing, unclear, or insufficiently defined to meet County contracting requirements and adequately protect the County’s interests. Specifically, the agreement lacks or inadequately addresses key provisions customarily required by the County, such as warranties, indemnification, limitation of liability, governing law and venue, dispute resolution, data protection and confidentiality, termination rights, and remedies for nonperformance. The absence or insufficiency of these essential terms creates legal uncertainty and prevents approval at the administrative level. Accordingly, Board review and approval are required despite the contract amount falling below the Purchasing Agent approval threshold.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-9044) on December 17, 2025; Department of Risk Management (Stephanie Mead, Staff Analyst II Trainee, 386-8623) on November 26, 2025; Innovation and Technology (Lynn Fyhrlund, Chief Information Officer, 388-5501) on December 16, 2025; County Finance and Administration (Garrett Baker, Administrative Analyst, 387-3077) on December 18, 2025.

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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: January 13, 2026



cc: HR - Gonzalez w/agree
Contractor - c/o HR w/agree
File - w/agree

CCM 01/26/2026