

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

January 28, 2025

FROM

ENSEN MASON, Auditor-Controller/Treasurer/Tax Collector

SUBJECT

Non-Financial Master Subscription and Services Agreement with Contentful Inc. for Cloud-Based Content Management Services

RECOMMENDATION(S)

Approve non-financial Master Subscription and Services **Agreement No. 25-66** with Contentful Inc., including non-standard terms, for a cloud-based subscription service to manage and organize public, web-based content and improve customer searches and experience, beginning January 28, 2025, and remaining in effect so long as there is a valid service or statement of work, or until terminated by either party.

(Presenter: Ensen Mason, Auditor-Controller/Treasurer/Tax Collector, 382-7000)

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 agreement will not result in the use of Discretionary General Funding (Net County Cost). The Master Subscription and Services Agreement (Agreement) with Contentful Inc. (Contentful) is non-financial in nature and does not commit the County to make any purchases. If future purchases are made under this Agreement, the Auditor-Controller/Treasurer/Tax Collector (ATC) will adhere to County purchasing policies and return to the Board of Supervisors (Board) for approval, if necessary.

BACKGROUND INFORMATION

ATC is in the process of modernizing and updating its forward-facing public website. By leveraging Contentful's content management system, ATC can organize, manage, and distribute public content efficiently, allowing customers to search for and find information within the website faster.

ATC encompasses several divisions, all producing important public content, including Countywide Cost Allocation Plans (COWCAP), financial reports, grant information, Property Tax publications, Treasurer publications and reports, audit reports, and much more. All of this information is presented to the public on the ATC website. ATC researched and evaluated various content management solutions and determined that integrating Contentful's content management tools into the website upgrade offers the best solution for enhancing the user experience and support capabilities, improving document research time, and increasing overall customer satisfaction.

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The Agreement is Contentful's standard contract, 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, Contentful would not agree to all County standard terms. The non-standard and missing terms include the following:

1. Governing law is Delaware.
 - The County standard contract requires California governing law.
 - Potential Impact: The Agreement will be interpreted under Delaware law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on Delaware law, which may result in fees that exceed the total Agreement amount.
2. Venue for disputes arising under the Agreement is in Delaware.
 - County Policy 11-05 requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: Having a venue in Delaware may result in additional expenses that exceed the amount of the Agreement.
3. The Agreement does not include certain standard County insurance requirements, including the waiver of subrogation.
 - 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: No waiver of subrogation may allow Contentful's insurer to bring suit against the County, which could result in expenses that exceed the total Agreement amount.
4. The County is required to indemnify Contentful against any claim brought by a third party arising from County's violation of the Contentful Acceptable Use Policy or alleging that County content, materials or applications infringe or misappropriate intellectual property rights.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify Contentful, 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 Contentful without such limitations and the County could be responsible to defend and reimburse Contentful for costs, expenses, and damages, which could exceed the total Agreement amount. County Counsel cannot advise on, whether and to what extent, Delaware law may limit or expand this Agreement term.
5. Contentful's maximum liability to the County is limited to the cumulative fees invoiced to the County under the Agreement in the twelve months preceding the date the claim arose, or, for breaches of the confidentiality, security, and data protection provisions of the Agreement, two times the cumulative fees invoiced to the County under the Agreement in the twelve months preceding the date the claim arose. This limitation of liability does not apply to Contentful's indemnification obligations, gross negligence,

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willful misconduct, or liability arising from personal injury, death, or damage to tangible property.

- 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, Delaware law may limit or expand the exclusion of limits to the extent prohibited by applicable law.

6. Contentful may assign the Agreement to a successor of substantially all of its assets or to an affiliate of the company, without prior 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: Contentful 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 Delaware law may permit or restrict a party's right to assign without an express provision in the Agreement.

ATC recommends approval of the Agreement with Contentful, including the non-standard terms, to support ATC's business functions, advance services provided to the public, and ensure public materials are readily accessible.

PROCUREMENT

ATC explored various content management solutions and determined that Contentful was the best fit for the ATC's needs, as other options lacked the necessary features and comprehensive services required.

The Agreement, including non-standard terms, will be used to accompany future purchase orders to be approved as necessary in accordance with County Policy 11-04, Procurement of Goods, Supplies, Equipment, and Services.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Kaleigh Ragon, Deputy County Counsel, 387-5455) on December 20, 2024; Risk Management (Greg Ustaszewski, Staff Analyst, 386-9008) on December 17, 2024; Purchasing (Monica Centeno, Lead Buyer, 386-8046) on December 26, 2024; Finance (Jenny Yang, Administrative Analyst, 387-4884) on January 3, 2025; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on January 10, 2025.

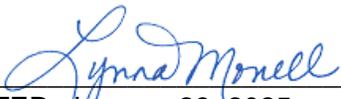
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Record of Action of the Board of Supervisors
San Bernardino County

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 28, 2025



cc: ATC - Le w/agree
Contractor - c/o ATC w/agree
File - w/agree
MBA 01/29/2025