

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

February 27, 2024

FROM

LUTHER SNOKE, Chief Executive Officer, County Administrative Office

SUBJECT

Service Order and Terms of Service Agreement with Sprout Social, Inc. for Social Media Management

RECOMMENDATION(S)

Approve Service Order and Terms of Service **Agreement No. 24-151** with Sprout Social, Inc., including non-standard terms, to license a social media management tool in the total amount of \$135,000 for a total contract period of three years from March 30, 2024, through March 29, 2027, automatically renewing for three-year periods until notice of non-renewal is provided. (Presenter: Martha Guzman-Hurtado, Chief Communications Officer, 387-4193)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Promote the Countywide Vision.

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 \$45,000 annual cost associated with this Service Order and Terms of Service Agreement (Agreement), for a three-year total cost of \$135,000, is included in County Administrative Office's 2023-24 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

The San Bernardino County communications team, comprised of representatives from various departments, uses social media to directly inform the public about County government news and services. This communication tool is critical to providing information, particularly during emergencies. Through Sprout Social, Inc. (Sprout Social), the County maintains more than 100 social media accounts across County departments on platforms such as Facebook, Instagram, YouTube and X, formerly known as Twitter. More than half a million people follow the County's social media accounts.

On March 29, 2022 (Item No. 26), the Board of Supervisors (Board) approved non-competitive Agreement No. 22-215 with Sprout Social, including non-standard terms, to license a social media management tool in the amount of \$90,000 for a total contract period of two years from March 29, 2022 through March 28, 2024, automatically renewing for two-year periods until notice of non-renewal is provided. A new Agreement is recommended as Sprout Social offered to maintain the \$45,000 annual cost for a three-year term if the County entered into a new agreement rather than the two-year extension of Agreement No. 22-215. The new Agreement includes automatic renewal for three-year periods, until notice of non-renewal is provided. The

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cost of the three-year extension periods could include an increase not to exceed seven percent, upon 60-days' prior notice of increase from Sprout Social.

The Sprout Social social media management tool allows the County to monitor and approve all social media content for all County departments in one location, study analytics to measure the effectiveness of outreach to the public, and ensures social media is being used properly to communicate. Sprout Social has superior historical data on the County's media posts that allow for more detailed analytics of our social media use. The platform also offers a robust workflow that allows for approvals, which provides a structured review of content before posted. Sprout Social has grown to be an integral component of the County's communication strategy.

The Sprout Social Agreement is Sprout Social's standard commercial contract terms, which include terms that differ from the standard County contract and omit certain County standard contract terms. Sprout Social is unwilling to negotiate these terms. The non-standard and missing terms include the following:

1. Governing law of the Agreement with the State of Illinois.
 - The County standard contract requires California governing law.
 - Potential Impact: The Agreement will be interpreted under Illinois law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on Illinois law, which may result in fees that exceed the total Agreement amount.
2. Sprout Social may amend the Agreement terms at any time, effective immediately upon posting.
 - County Policy 11-06 requires 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 the contractor and County.
 - Potential Impact: The County could be agreeing to new terms without review by anyone, including County Counsel, and without approval of the new terms by the Board. County Counsel cannot advise on whether and to what extent Illinois law may affect the enforceability of unilateral changes to the terms.
3. All disputes are to be resolved through binding arbitration.
 - The County standard contract does not require arbitration.
 - Potential Impact: Binding arbitration decisions are not appealable. In addition, disputes that might otherwise be settled in small claims court would incur arbitration costs that could exceed the costs of a small claims action, and the Agreement amount. County Counsel cannot advise on whether and to what extent such arbitration provisions may be enforceable against a government entity under Illinois law.
4. Sprout Social may assign the contract without notice and without the County's consent.
 - The County standard contract requires that the County must approve any assignment of the contract.
 - Potential Impact: Sprout Social 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

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- the law until it becomes aware of the assignment and terminates the Agreement. County Counsel cannot advise on whether and to what extent Illinois law may permit or restrict a party's right to assign without an express provision in the Agreement.
5. 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, Illinois 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.
 6. The County agrees to indemnify Sprout Social against all third party claim arising from breach of the Agreement, the use of third party services provided by Sprout Social, and (i) use of the service in combination with other products, (ii) use of the service for purposes not intended, (iii) unauthorized modification of the services, and (iv) County content.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify Sprout Social, 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 Sprout Social without such limitations and the County could be responsible to defend and reimburse Sprout Social for costs, expenses, and damages, which could exceed the total Agreement amount. County Counsel cannot advise on, whether and to what extent, Illinois law may limit or expand this Agreement term.
 7. The Agreement does not require Sprout Social 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 Sprout Social 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.
 8. Sprout Social's maximum aggregate liability to the County is limited to the amount paid by the County to Sprout Social in the 12 months prior to the date the claim arose, without any exclusions.
 - 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, Illinois law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
 9. Payment terms are Net 30 with a late payment charge of 1.5% monthly, compounded daily, and County is to reimburse Sprout Social for costs of collection.

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- 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. Failing to pay within 30 days from the date of invoice may result in a material breach of the Agreement, which could allow Sprout Social to terminate the Agreement and seek other legal remedies, including charging the County interest at a rate of 1.5% monthly, compounded daily, which could exceed the Agreement amount.
10. The Agreement automatically renews unless the County provides notice at least 30 days prior to the end of the subscription term.
- County Policies 11-05 and 11-06SP1 do not permit indefinite term or automatically renewing contracts except for end user license agreements, software/hardware licenses and subscriptions, and master service agreements or unless approved by the Board.
 - Potential Impact: There is no end term to the Agreement and the County is indefinitely bound to the terms and conditions of the Agreement until the County gives notice of non-renewal no less than 30 days prior to the renewal. If the notice is not timely given, the Agreement will renew for an additional three-year term, and the County is liable for payment of fees for the full three years.
11. The County may not terminate the Agreement for convenience. In addition, the County agrees to a non-cancelable payment obligation and non-refundable fees.
- 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 Sprout Social. Any attempted termination by 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.
12. Venue for disputes arising under the Agreement, where permitted, is in the appropriate federal, state, or local court of Cook County, Illinois.
- 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 Cook County, Illinois may result in additional expenses that exceed the amount of the Agreement.
13. Sprout Social provides the services “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, Illinois law may limit or expand the disclaimers of warranty to the extent prohibited by applicable law.

The County Administrative Office recommends approval of the Agreement with Sprout Social, including non-standard terms, to continue to provide valuable social media communication capabilities.

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PROCUREMENT

Purchasing supports this non-competitive procurement based on functional specifications, as Sprout Social connectivity works seamless with all County department social media platforms such as Facebook, Instagram, YouTube and X. Sprout Social's unique solution allows the County to manage multiple social media accounts which are critical for providing information to County residents.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on January 29, 2024; Purchasing (Ariel Gill, Supervising Buyer, 387-2070) on January 29, 2024; Risk Management (Victor Tordesillas, Director, 386-8623) on January 31, 2024; Finance (Erika Rodarte, Administrative Analyst, 387-4919) on January 22, 2024; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on February 9, 2024.

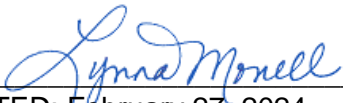
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Record of Action of the Board of Supervisors
San Bernardino County

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: February 27, 2024



cc: CAO - Guzman-Hurtado w/agree
 Contractor - c/o CAO w/agree
 File - w/agree
CCM 02/28/2024