

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

February 27, 2024

FROM

JOSHUA DUGAS, Director, Department of Public Health

SUBJECT

Service Agreement with Flipsnack for Flipbook Software Subscription

RECOMMENDATION(S)

1. Approve service **Agreement No. 24-181** with Flipsnack, including non-standard terms, for the provision of the Flipbook software subscription, in the not-to-exceed amount of \$2,500, for the period of March 1, 2024 through February 28, 2029.
2. Authorize the Director of the Department of Public Health or Assistant Director of the Department of Public Health to electronically accept the terms and conditions of the service agreement, and any future non-substantive amendments, on behalf of the County, subject to review by County Counsel.
3. Direct the Director of the Department of Public Health or Assistant Director of the Department of Public Health to transmit copies of the terms and conditions of the service agreement, and any future non-substantive amendments, to the Clerk of the Board of Supervisors within 30 days of acceptance or execution.

(Presenter: Joshua Dugas, Director, 387-9146)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Provide for the Safety, Health and Social Service Needs of County Residents.

FINANCIAL IMPACT

This item does not impact Discretionary General Funding (Net County Cost). The cost of the Flipbook software subscription will not exceed \$2,500. This subscription is funded from federal CalFresh grant funding provided to the California Department of Social Services, passed to the California Department of Public Health, and awarded to the Local Health Department grantee, the San Bernardino County Department of Public Health (DPH). Adequate appropriation and revenue are included in the DPH 2023-24 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

DPH's Nutrition and Wellness Services develops a digital magazine, known as *A Taste of Wellness*, and emails the monthly magazine to program subscribers (families, individuals, and community partners), other County departments, as well as posts the material on DPH's website. This magazine provides nutrition, physical activity and wellness articles, health tips, healthy recipes, upcoming program classes, and other nutrition-based community events. In an effort to make the magazine more appealing and interactive, DPH has chosen the Flipsnack Flipbook software (Flipbook). The Flipbook subscription will allow staff to utilize the various tools and templates in Flipbook to present engaging content and draft a creative professional product

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without requiring graphic design experience. Additionally, Flipbook allows PDF files to be easily uploaded and edited, and offers features such as sound effects, personalized links to distribute the flipbook product, engagement tracking, and link pop-ups.

The service agreement (Agreement) with Flipsnack is a non-negotiable clickwrap agreement and includes terms that differ from the standard County contract terms. County Policy 11-05 requires departments to obtain the Board of Supervisors' (Board) approval for the procurement of goods and services with non-standard terms and conditions. The non-standard and missing terms include the following:

1. Governing law is the State of Michigan.
 - The County standard contract requires California governing law.
 - Potential Impact: The Agreement will be interpreted under Michigan law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on Michigan law, which may result in fees that exceed the total Agreement amount.
2. The County is required to indemnify Flipsnack against all third party claims.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify Flipsnack, 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 Flipsnack without such limitations and the County could be responsible to defend and reimburse Flipsnack for costs, expenses, and damages, which could exceed the total Agreement amount. County Counsel cannot advise on, whether and to what extent, Michigan law may limit or expand this Agreement term.
3. All disputes arising under the Agreement must be settled by 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 Michigan law.
4. Flipsnack may change the Agreement terms without notice at any time.
 - County Policy 11-06 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 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 Michigan law may affect the enforceability of unilateral changes to the terms.
5. The Agreement does not require Flipsnack to meet the County's insurance standards as required pursuant to County Policies 11-05, 11-07 and 11-07SP.

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- 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 Flipsnack 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.
6. Flipsnack disclaims all liability to the County without exception.
- 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, Michigan law may limit or expand the exclusion of limits to the extent prohibited by applicable law.

DPH recommends the approval of the Agreement, including the non-standard terms, as the software allows program staff to efficiently draft and distribute engaging, professional publications, which promote the health and wellness of residents.

PROCUREMENT

DPH reviewed five companies offering various types of Flipbook software and based on cost, tools, available templates, engagement tracking, and ease of usability, it was determined that Flipsnack Flipbook best met the needs of DPH. The subscription fee meets the low-cost threshold as per the Procurement Manual, Section 8 and as such a Request for Proposals was not required.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Adam Ebright, Deputy County Counsel, 387-5455) on January 29, 2024; Risk Management (Victor Tordesillas, Director, 386-8623) on January 29, 2024; Finance (Iliana Rodriguez, Administrative Analyst, 387-4205) on February 9, 2024; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on February 9, 2024.

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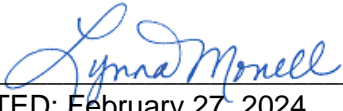
Record of Action of the Board of Supervisors
San Bernardino County

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: Public Health - Saucedo w/ agree
Contractor c/o Public Health w/ agree
File w/ agree

JLL 03/1/2024