

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

December 19, 2023

**FROM**

**LYNN FYHRLUND, Chief Information Officer, Innovation and Technology Department**

**SUBJECT**

Non-Financial Agreements with LinkedIn Corporation for LinkedIn Learning

**RECOMMENDATION(S)**

1. Approve the following non-financial agreements, including non-standard terms, with LinkedIn Corporation for access and use of LinkedIn Learning online educational and training platform, effective on the date the first order form is executed and remaining in effect until terminated:
  - a. LinkedIn Corporation Subscription **Agreement No. 23-1382.**
  - b. LinkedIn Corporation Service Terms, **Agreement No. 23-1383**
  - c. LinkedIn Corporation User **Agreement No. 23-1384.**
  - d. LinkedIn Corporation Data Processing **Agreement No. 23-1385.**
2. Authorize the Chief Information Officer or Assistant Chief Information Officer to electronically accept updates to the LinkedIn Corporation Subscription Agreement, LinkedIn Corporation Service Terms, LinkedIn Corporation User Agreement, and the LinkedIn Corporation Data Processing Agreement, subject to review by County Counsel, provided that such updated terms do not substantively modify the terms of the original agreements.
3. Direct the Chief Information Officer or Assistant Chief Information Officer to transmit any non-substantive updated terms that are electronically accepted to the Clerk of the Board of Supervisors within 30 days of acceptance or execution.

(Presenter: Lynn Fyhrlund, Chief Information Officer, 388-5501)

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**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 LinkedIn Corporation Subscription Agreement, LinkedIn Corporation Service Terms, LinkedIn Corporation User Agreement, and the LinkedIn Corporation Data Processing Agreement (collectively, Agreements) with LinkedIn Corporation (LinkedIn), are non-financial in nature and do not commit the County to make any purchases. If future purchases are made under the Agreements, the Innovation and Technology Department (ITD) will adhere to County purchasing policies and return to the Board of Supervisors for approval, if necessary.

**BACKGROUND INFORMATION**

The ITD Business Solutions Development Division facilitates the development, maintenance, support, and enhancement of business applications for County departments on a variety of

**Non-Financial Agreements with LinkedIn Corporation for LinkedIn Learning**  
**December 19, 2023**

operating systems and software platforms. This includes the design, development, enhancement, and maintenance of internal County and public websites.

Due to the different technologies utilized by the ITD Business Solutions Development Division to provide services, staff require technical training to keep their skillsets current and to learn new technologies. LinkedIn Learning provides online education and training tools to users for various topics, including website design, Adobe Acrobat, and ADA accessibility. The technology content and courses are consistent in quality because of expert in-house technology strategists, instructional designers, and production artists, including diverse thought leaders and some of the world's leading subject matter experts. The educational opportunities provide hands-on learning practice, including virtual environments, challenge and solutions courses, and downloadable follow-along source code. Staff utilizing the LinkedIn online education can validate progress and skills with technical skill evaluations, quizzes and exams, professional certificates, certification preparation, and continuing education units.

The Agreements are, collectively, LinkedIn's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. LinkedIn is unwilling to negotiate these terms. The Agreements are non-negotiable clickwrap agreements accepted by click-to-accept. The non-standard and missing terms include the following:

1. LinkedIn may assign the Agreements without notice to the County and without the County's approval.
  - (c) The County standard contract requires that the County must approve any assignment of the contract.
  - (d) Potential Impact: LinkedIn could assign the Agreements 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 Agreements.
2. The prevailing party is entitled to recover attorneys' fees and costs.
  - (c) The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
  - (d) Potential Impact: If either party institutes any legal proceedings related to the Agreements, the prevailing party will be entitled to recover reasonable attorneys' fees, which could exceed the total amount of purchases under the Agreements.
3. The Agreements do not require LinkedIn to indemnify the County, as required by County Policies 11-05 and 11-07, including for intellectual property infringement claims.
  - (c) 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.

**Non-Financial Agreements with LinkedIn Corporation for LinkedIn Learning**  
**December 19, 2023**

- (d) Potential Impact: LinkedIn is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from LinkedIn's negligent or intentional acts and intellectual property infringement. If the County is sued for any claim, including intellectual property infringement based on its use of LinkedIn's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total amount of purchases under the Agreements.
4. The Agreements do not require LinkedIn to meet the County's insurance standards as required pursuant to County Policies, 11-05, 11-07 and 11-07SP.
- (c) 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 County policy and in the County standard contract.
- (d) Potential Impact: The County has no assurance that LinkedIn will be financially responsible for claims that may arise under the Agreements, which could result in expenses to the County that exceed the total amount of purchases under the Agreements.
5. LinkedIn's maximum liability to the County under the Subscription Agreement is limited to the total fees paid or payable during the subscription term, excluding LinkedIn's (a) confidentiality obligations; (b) liability for fraud, gross negligence, intentional misconduct, death or personal injury, violation of the County's intellectual property rights; or (c) personal data breaches that result from LinkedIn's negligence, intentional misconduct, or material failure to comply with the terms of the Data Processing Agreement. LinkedIn's maximum liability to the County under the User Agreement, is limited to the total fees paid or \$1,000, excluding death, personal injury, fraud, gross negligence, intentional misconduct, or negligent breach of a material obligation.
- (c) The County standard contract does not include a limitation of liability.
- (d) Potential Impact: Claims could exceed the liability caps and the amounts of purchases under the Agreements, leaving the County financially liable for the excess.
6. The term of the Subscription Agreement is indefinite beginning on the date the first order form is executed and continuing until terminated by either party.
- (c) 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.
- (d) Potential Impact: There is no end term to the Agreements and the County is indefinitely bound to the terms and conditions of the Agreements until terminated for uncured breach by or bankruptcy of the other party.
7. There is no termination for convenience of the Subscription Agreement without penalty.
- (c) 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.

**Non-Financial Agreements with LinkedIn Corporation for LinkedIn Learning**  
**December 19, 2023**

- (d) Potential Impact: All Subscription Agreement payment obligations are non-refundable and non-cancelable. The County can only terminate the Subscription Agreement once all subscriptions have expired, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.

ITD recommends approval of the LinkedIn Agreements, including the non-standard terms, to provide ITD staff with the necessary education tools to enhance knowledge and expertise with website design, enhancement, and maintenance.

**PROCUREMENT**

The Agreements, including non-standard terms, will be used to accompany future purchase orders issued to authorized resellers for access to LinkedIn Learning training tools to be approved, as necessary, per County Policy 11-04, Procurement of Goods, Supplies, Equipment, and Services, provided that LinkedIn does not substantively modify the terms of the Agreements.

LinkedIn Learning was selected by ITD for the extensive variety of intermediate and advanced educational learning tools and courses related to website design, enhancement, and maintenance, including Adobe and ADA website compliance. ITD researched other online training options, however, Adobe is a proprietary company and limits access to their courses. LinkedIn is an authorized vendor of Adobe training courses and is therefore able to provide Adobe courses through LinkedIn Learning. The Purchasing Department concurs with the non-competitive justification for use of LinkedIn Learning. ITD will complete a competitive bid process for the purchase of LinkedIn Learning through authorized resellers as per County policy.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on November 14, 2023; Purchasing (Ariel Gill, Supervising Buyer 387-2070) on November 8, 2023; Risk Management (Victor Tordesillas, Director, 386-8623) on November 15, 2023; Finance (Iliana Rodriguez, Administrative Analyst, 387-4205) on December 4, 2023; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on December 4, 2023.

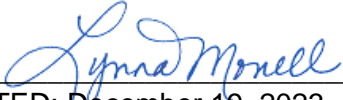
**Non-Financial Agreements with LinkedIn Corporation for LinkedIn Learning**  
**December 19, 2023**

Record of Action of the Board of Supervisors  
San Bernardino County

**APPROVED (CONSENT CALENDAR)**

Moved: Curt Hagman   Seconded: Col. Paul Cook (Ret.)  
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY  \_\_\_\_\_  
DATED: December 19, 2023



cc: IT - McClane w/agrees  
Contractor c/o IT w/agrees  
File - w/agree  
MA 01/8/2024