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

June 9, 2026

FROM
LEONARDO GONZALEZ, Director, Human Resources Department

SUBJECT
Agreement with The Bancorp Bank for Flexible Spending Account and Dependent Care Benefit Card and Collateral Account Services

RECOMMENDATION(S)
1. Approve Deposit Account **Agreement No. 26-438** with The Bancorp Bank, including non-standard terms, to maintain a collateral deposit account to fund participant benefit cards for the Medical Expense Reimbursement and Dependent Care Assistance Plans, which includes the following documents:
   a. The Bancorp Bank Payment Solutions Group Internet Banking Enrollment Form, including non-standard terms, for view-only account access, and ability to request electronic statements.
   b. The Certification of Beneficial Owner(s) document.
   c. The non-financial The Bancorp Bank Terms of Use, Privacy Policy, and Security Policy (Security Matters), including non-standard terms, referenced in the Internet Banking Enrollment Form.
2. Delegate authority to the Employee Benefits and Services Division Human Resources Division Chief to be listed and serve as an additional authorized collateral deposit account signatory on the Deposit Account Agreement.
3. Delegate authority to the Employee Benefits and Services Division Human Resources Division Chief to accept and execute The Bancorp Bank Payment Solutions Group Internet Banking Enrollment Form.
4. Delegate authority to the Employee Benefits and Services Division Human Resources Division Chief to be listed as the "person opening the account" and to execute the Certification of Beneficial Owner(s) document.
5. Delegate authority to the Employee Benefits and Services Division Human Resources Division Chief to electronically accept the non-financial The Bancorp Bank Terms of Use, Privacy Policy, and Security Policy (Security Matters).
6. Direct the Human Resources Director to transmit The Bancorp Bank Payment Solutions Group Internet Banking Enrollment Form and Certification of Beneficial Owner(s) to the Clerk of the Board of Supervisors within 30 days of execution.

(Presenter: Leonardo Gonzalez, Director, 387-5570)

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 additional Discretionary General Funding (Net County Cost). The annual collateral account deposit will be funded through the forfeiture of the Medical Expense Reimbursement (FSA) and Dependent Care Assistance (DCAP) plans, consistent with applicable Internal Revenue Service (IRS) regulations. The required collateral account balance is reviewed annually at the beginning of each new Medical Expense Reimbursement plan year. Weekly replenishment is based on actual benefit card transactions from the prior week and are funded through employee and department contributions pursuant to applicable ordinances, compensation plans, and negotiated Memoranda of Understanding with individual labor unions. This agreement with The Bancorp Bank (Bancorp) reduces the required collateral rate from 6% to 4.4% of the total annual participant elections. As a result, the collateral deposit for the 2025-26 plan year will decrease from $404,793 to $296,848, resulting in a refund of $107,945 from the 2025-26 plan year collateral deposit. The internet Terms of Use, Privacy Policy, and Security Policy (Security Matters) are non-financial in nature.

BACKGROUND INFORMATION

On November 5, 2013 (Item No. 26), the Board approved Agreement No 13-908 with Evolution1, Inc. to provide software application and benefit card services for the County's FSA and DCAP plans from November 5, 2013 through February 28, 2017, with an option to extend one additional two-year term. The contract with Evolution1, Inc. required the County to open and maintain one or more collateral accounts at a bank selected by Evolution1, Inc. for purposes of replenishing benefit card transactions, and in connection therewith sign a Deposit Account Agreement required by the bank. Additionally, the Board approved Agreement No. 13-909 with Bancorp, which Evolution1, Inc. utilized to maintain collateral accounts for the FSA and DCAP plans. Agreement No. 13-909 with Bancorp also requires the County to provide an annual deposit of 6% of the total annual election to continue funding the collateral account. Weekly replenishment is required and is calculated based on the previous week's benefit card activity. In 2016, Evolution1, Inc underwent a corporate name change to WEX Health Inc. (WEX), with no change to the County's scope of services or continuity of operations.

Following the initial term, the Human Resources Department (HR) exercised the contract extension option on August 30, 2016, extending the contract through February 28, 2019. On March 12, 2019, the County entered into a new contract with WEX for the period of March 1, 2019 through February 29, 2024, which was approved by the Purchasing Department.

On November 5, 2024 (Item No. 22), the Board approved Agreement No. 24-1063 with WEX for the term of March 1, 2024 through February 28, 2029, to continue providing software application and benefit card services for plan participants. The Bancorp Deposit Account Agreement established in 2013 has remained in effect and continues to support the administration of these contracts and settlement of benefit card transactions.

In February 2026, WEX requested that the County renew the Deposit Account Agreement (Agreement) to update account signatories. During this renewal process, the County negotiated a reduction in the required annual collateral rate from 6% to 4.4%. Approval of this item will update the annual collateral rate to 4.4% of the total annual election to fund participant benefit cards, updates account signatories, and delegates authority to the Human Resources Benefits Division Chief responsible for the FSA and DCAP plans to serve as additional authorized signatory on the account. In addition, Bancorp is requesting that the County complete and sign the Payment Solutions Group Internet Banking Enrollment Form (Enrollment Form), which requires adherence to internet Terms of Use, Privacy Policy, and Security Policy (Security Matters). Approval of the Enrollment Form will allow Employee Benefits and Services Division

Human Resources Division Chief to access Bancorp's online banking system to view account information and request electronic statements.

Although the Agreement states that the County is establishing a non-interest- bearing deposit account (Collateral Account) for the purpose of enabling Bancorp to settle card transactions in a timely manner, the County is not establishing a new collateral account with Bancorp. The County already has a Collateral Account with Bancorp, which will remain active and unchanged, and all existing funds will continue to remain in that account. Approval of this item only updates the current Agreement and Enrollment Form as described above.

This item also approves the non-financial internet Terms of Use, Privacy Policy, and Security Policy included in the Bancorp Enrollment Form and authorizes the Human Resources Division Chief to electronically accept these terms.

HR is requesting the Board to delegate authority to the Human Resources Division Chief for the Employee Benefits and Services Division to electronically accept the terms of Bancorp's internet Terms of Use, Privacy Policy, and Security Policy, as well as to serve and be listed as an additional authorized collateral deposit account signatory to request account statements, update account address, make internet banking inquiries with Bancorp, and to execute the Certification of Beneficial Owner(s) and Bancorp's Payment Solutions Group Internet Banking Enrollment Form, including entering relevant account number information. These supplemental documents are being requested by Bancorp for purposes of renewing and updating the County's account.

The Deposit Account Agreement, Bancorp Enrollment Form, Bancorp internet Terms of Use, Privacy Policy, and Security Policy are Bancorp's standard documents, which include the following terms that differ from the standard County contract terms:

1. The term of the Agreement is indefinite.
   - County Policies 11-05 and 11-06 SP1 do not permit an 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. However, the Agreement provides that 120 days following the deactivation of all cards associated with the County, Bancorp will return all remaining County funds in the collateral account.

2. There is no termination for convenience without penalty. Further, the Agreement provides that as collateral for the County's obligations to The Bancorp, the County grants to Bancorp a first priority security interest in all funds held in the collateral account.
   - 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: The County does not retain the right to terminate the Agreement for convenience. Any attempted termination by the County could result in payment liability for the County.

3. Governing law for the Agreement 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.

4. There is no stated venue in the Agreement and the Bancorp internet Terms of Use, Privacy Policy, and Security Policy provides that any claims, actions, or proceedings related to a website of Bancorp or the terms and conditions must be brought in the Federal District Court for the District of Delaware and requires the County to submit to the jurisdiction of said court for such purposes.
   - County Policy 11-05 requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
   - Potential Impact: Bancorp is located in New Castle County, Delaware. Having no express venue in the Agreement means that New Castle County, Delaware could be applied to disputes arising under the Agreement, which may result in additional expenses that exceed the amount of the Agreement. Further, claims, actions or proceedings related to a Bancorp website or the terms and conditions must be brought in the Federal District Court for the District of Delaware, which may result in additional expenses that exceed the amount of 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, Delaware 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 Agreement does not require Bancorp 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, in sum, that the contractor indemnify, defend, and hold County harmless from third party claims arising out of the acts, errors or omissions of any person. The County's standard contract provision for intellectual property indemnity includes, but is not limited to, the following: 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: Bancorp is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from Bancorp'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 Bancorp's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount. County Counsel cannot advise on whether and to what extent Delaware law may allow the County to require Bancorp to defend or indemnify it absent an express provision in the Agreement.

7. The Agreement does not require Bancorp 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 Couty's Risk Management Department and as set forth in County policy in the County standard contract.
    - Potential Impact: The County has no assurance that Bancorp 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. The Agreement includes provisions that establish minimum funding requirements and require weekly transfers of additional funds by the County to replenish or replace amounts settled by Bancorp. The Agreement requires that these replenishment funds be deposited by the County into the Collateral Account by the end of business each Tuesday for the previous Monday through Sunday settlement week. Further, the Agreement provides that as collateral for the County's obligations to the Bancorp, the County grants to Bancorp a first priority security interest in all funds held in the collateral account.
    - 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 on a weekly basis may result in a material breach of the Agreement, which could allow Bancorp to terminate the Agreement and seek other legal remedies, including seeking to exercise the first priority security interest in the County funds held in the collateral account, which could exceed the Agreement amount.

9. There is no provision in the Agreement addressing the assignability of the Agreement.
    - The County standard contract requires that the County must approve any assignment of the contract.
    - Potential Impact: Bancorp 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.

10. There is no provision in the Agreement addressing dispute resolution.
    - The County standard contract requires that in the event of a dispute, the parties shall use their best efforts to settle the dispute through negotiation with each other in good faith.
    - Potential Impact: In the event of a dispute with County, Bancorp will not be required to use its best efforts to settle the dispute through negotiation with each other in good faith. County Counsel cannot advise on whether and to what extent Delaware law may permit, require, or restrict dispute resolution without an express provision in the Agreement.

11. Bancorp may change the internet Terms of Use, Online Privacy Policy, and Security Policy without notice at any time.

- The County standard contract requires that any changes to the contract be reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.
- Potential Impact: Bancorp may change the internet Terms of Use, Online Privacy Policy, and Security Policy without notice at any time. The County could be agreeing to new terms, such as stricter limitations of liability or altered data practices – without review by anyone, including County Counsel, and without the approval of the new terms by the Board.

12. The Bancorp internet Terms of Use, Privacy Policy, and Security Policy limit liability of Bancorp to the County and do not fully warrant Bancorp's services and products. Additionally, the internet Tems of Use, Privacy Policy, and Security Policy limit Bancorp's liability related to third-party websites, products, and services which are made available through links on Bancorp's website. Contractor limits its liability and limits its warranty obligations by including the following language: "The site, any posted or linked information, and any related software are provided on an "as-is" basis, with no warranties of any kind whatsoever, either express or implied, including but not limited to any warranties of title or accuracy, or any implied warranties of merchantability or fitness for a particular purpose. Use of the site and any associated information and software, is at your sole risk. . . Neither we, nor any third party involved in the creation, production, or delivery of the information at this site, nor the officers, directors, employees, or representatives of the foregoing will be liable in any way for any direct, special, punitive, consequential, or indirect damages (including without limitation, lost profits, cost of procuring substitute service, or lost opportunity) arising out of or in connection with this site, or use of this site or linked site, whether or not we are made aware of the possibility of such damages. This limitation includes but is not limited to the transmission of any viruses, data, or harmful code that may affect your equipment; any incompatibility between the site's files and your browser or other program used to access the site; any failure of any electronic or telephone equipment, communication, or connection lines; unauthorized access; theft; operator errors; or force majeure. We do not guarantee continuous, uninterrupted, or secure access to the site or a linked site. We do not always investigate, verify, monitor, or endorse the content, accuracy, opinions expressed, and links provided by the operators of a linked site."
    - The County standard contract does not include a limitation of liability and County Policy 11-05 requires contractors to fully warrant their services and products.
    - Potential Impact: Contractor limits its liability to the County as specified, including, but not limited to, due to unauthorized access, theft, etc., leaving the County financially liable for costs that could exceed the contract amount. In addition, the County's liability under the contract is not similarly limited. Furthermore, the disclaimer of warranty as specified, coupled with the lack of indemnity provisions, including indemnity for intellectual property infringement means that, should the County be sued for intellectual property infringement based on its use of Bancorp software or services, the County will be liable for the costs of defense and damages. While claims against end users are rare, they have been known to occur, and the County could be responsible for defense costs and damages, which could exceed the total contract amount. County Counsel cannot advise on, whether and to what extent, Delaware law may limit or expand the disclaimer of warranty and limitation of liability or the extent prohibited by applicable law.

HR recommends approval of the Deposit Account Agreement, Bancorp Payment Solutions Group Internet Banking Enrollment Form, Bancorp internet Terms of Use, Privacy Policy, Security Policy, and Certification of Beneficial Owner(s), including the non-standard terms, to enable the FSA and DCAP participants to continue utilizing the benefit card services.

PROCUREMENT
Not applicable.

REVIEW BY OTHERS
This item has been reviewed by County Counsel (Jose A. Mendoza, Deputy County Counsel, 387-5455) on May 28, 2026; Innovation and Technology Department (Don Le, Interim Chief Information Officer, 388-5501) on May 29, 2026; and County Finance and Administration (Garrett Baker, Administrative Analyst, 387-3077) on May 18, 2026.

Agreement with The Bancorp Bank for Flexible Spending Account and Dependent Care Benefit Card and Collateral Account Services
June 9, 2026

Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY Lynna Monell
DATED: June 9, 2026

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

CCM 06/22/2026