

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

September 10, 2024

FROM

CHERYL ADAMS, Deputy Executive Officer, Human Services

SUBJECT

Agreement with Vonage for Voice Over Internet Protocol Telecommunication Service

RECOMMENDATION(S)

1. Approve Business Communications Global Terms of Service **Agreement No. 24-823** with Vonage, including non-standard terms, for purchase of Voice over Internet Protocol telecommunication service utilized by San Bernardino County Human Services teleworking employees, in an amount not to exceed \$535,000, for the period of September 27, 2024, through September 26, 2025 or until terminated by either party, whichever is later.
2. Authorize the Purchasing Agent to issue Purchase Orders to Vonage to purchase Voice over Internet Protocol telecommunication service utilized by San Bernardino County Human Services teleworking employees, in an amount not to exceed \$535,000, for the period of September 27, 2024, through September 26, 2025.

(Presenter: Cheryl Adams, Deputy Executive Officer, 388-0238)

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 require additional Discretionary General Funding (Net County Cost). The amount not to exceed \$535,000 to purchase Vonage's Voice over Internet Protocol (VoIP) telecommunication service will be funded with multiple Human Services (HS) Administrative Allocations, which consist of 79% (\$422,650) Federal and State sources and 21% (\$112,350) Local Share, which includes 1991 and 2011 Realignment funds. Adequate appropriation and revenue have been included in the HS Administrative Claim 2024-25 budget and will be included in the 2025-26 recommended budget.

BACKGROUND INFORMATION

Vonage provides a VoIP communication platform for consumers and businesses to connect and communicate on any device through cloud-hosted voice, video, chat, and short message services. VoIP is a virtual phone system, a softphone, or application that can be downloaded to a mobile device (laptop, cell phone, tablet, etc.) allowing telephone calls to be placed over an internet connection.

Since the onset of COVID-19, HS has been utilizing Vonage's VoIP services for staff that are teleworking to maintain the delivery of critical services to customers. The VoIP solution has been an effective tool in providing seamless services for HS departments such as the

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Transitional Assistance Department and Program Integrity Division. Approval of this item will allow HS to continue to utilize Vonage for the on-going telework service model.

Vonage's Business Communications Global Terms of Services Agreement (Agreement) may be terminated upon either party providing 90-day written notice. The Agreement and incorporated documents include non-standard terms that differ from the standard County contract terms described in County Policy 11-05. Vonage is unwilling to negotiate these terms. The non-standard terms include the following:

1. The Governing law and venue is Delaware.
 - The County standard contract term requires the governing law and venue to be California.
 - 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. Amended terms may be made by Vonage and notified to the County either by email or through the invoice. The County will have 30 days to notify Vonage that such changes materially and adversely impact the County and the County must state specifically which changes are impactful.
 - The County standard contract term 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: Vonage may change the Agreement and privacy policy without notice at any time. The County could be agreeing to new terms without review by anyone, including County Counsel, and without the approval of the new terms by the Board of Supervisors (Board). County Counsel cannot advise on whether, and to what extent, Delaware law may affect the enforceability of unilateral changes to the terms.
3. The prevailing party in any action or proceeding to enforce the Agreement is entitled to recover its reasonable attorneys' fees and costs.
 - The County standard contract term requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: If either party institutes any legal proceedings related to the Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees, which could exceed the total Agreement amount.
4. Dispute resolution includes a mandatory arbitration process and waiver of ability to join a class action lawsuit.
 - The County standard contract term does not require arbitration.
 - Potential Impact: The Agreement provides for dispute resolution through management, and thereafter, if a claim is not resolved and the amount or nature of the claim cannot be resolved by small claims court, the claim must be submitted to binding arbitration. This requirement prevents the County from seeking relief through the courts, including a trial in front of a judge or jury, or from joining a class action lawsuit. Binding arbitration decisions are not appealable. County Counsel cannot advise on whether, and to what extent, such arbitration provisions may be enforceable against a government entity under Delaware law.

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5. The County agrees to defend, indemnify, and hold harmless Vonage, its Affiliates, and each of their respective employees, licensors, contractors, directors, officers and representatives for claims and damages relating to the County's use of the services in a manner not authorized by the Agreement, claims relating to County data, and the gross negligence, fraud or willful misconduct of the County. Vonage agrees to defend, indemnify and hold harmless the County against losses incurred in connection with intellectual property infringement, or the gross negligence, fraud or willful misconduct of Vonage.
 - The County standard contract term does not include any indemnification or defense by the County of a contractor and requires a contractor to agree to fully defend and indemnify the County.
 - Potential Impact: By agreeing to indemnify Vonage, 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 Vonage without such limitations, and the County would be responsible to defend and reimburse Vonage 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.

6. The County is required to acknowledge that Vonage's liability is strictly limited for any service outage or inability to complete an emergency call or access emergency service personnel. The County agrees to defend, indemnify, and hold Vonage harmless from all claims and costs arising from any absence, failure, or outage of the service, including emergency services calling or inability to call the emergency service number. In addition, the Agreement generally limits Vonage's liability to the total amounts paid under the Agreement in the 12 months immediately preceding the event giving rise to the claim. The limitation of liability excludes liability for death, bodily injury, or damage to tangible personal property.
 - The County standard contract does not include a limitation of liability for the contractor.
 - Potential Impact: Claims could exceed the liability cap and the Agreement amount leaving the County financially liable for the excess. In addition, the County's liability under the Agreement is not similarly limited. 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.

7. The Agreement does not require Vonage to meet the County's insurance standards as required pursuant to County policies.
 - The County policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department as set forth in County policy and in the County standard contract.
 - Potential Impact: The County has no assurance that Vonage will be financially responsible for claims that may arise from the County's use of the software, which could result in expenses to the County that exceed the total Agreement amount.

8. The Agreement is effective for as long as services are being provided to the County. For orders with a stated term, the initial term will automatically renew for successive periods to the same length as the initial term, except where either party provides written notice of intent not to renew at least 90 days prior to the end of the then current initial or renewal term.

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- The County standard contract term length is five years, indefinite terms are not permitted.
 - Potential Impact: There is no end term to the Agreement and the County is indefinitely bound to the terms and conditions of the Agreement, unless notice is given 90 days prior to the then expiring term and use of the services cease.
9. Payment is due within 10 days of notification with late payment interest of 1.5% per month.
- County standard payment terms are Net 60 days with no interest or late payment penalties.
 - Potential Impact: Failing to make timely payments will result in a material breach of the Agreement, which would allow Vonage to terminate the Agreement and seek other legal remedies, including charging the County interest at a rate of 1.5% per month. Vonage may also suspend services if undisputed amounts are not paid within 10 days of giving notice to the County.
10. The County may not terminate the Agreement for convenience.
- The County standard contract term gives the County the right to terminate a 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: Upon any termination by either party regardless of cause, the County is required to pay the full order amount, plus additional expenses, if any, which could result in payment liability where no funds are available due to lack of allocation or loss of funding. The Agreement does allow for termination of the Agreement for cause if there is a material breach that has not been cured within 30 days' written notice.

HS has reviewed the non-standard terms and determined that the benefit to the County of maintaining these services to facilitate telecommuting, outweighs the potential risks the non-standard terms pose and recommends approval of the Vonage Agreement.

On September 12, 2023 (Item No. 27), the Board approved Vonage Business Communications Global Terms of Service Agreement No. 23-1011, including non-standard terms, and authorized the Purchasing Department (Purchasing) to issue Purchase Orders to Vonage to purchase VoIP telecommunication service, in an amount not to exceed \$535,000, for the period of September 27, 2023, through September 26, 2024.

PROCUREMENT

On March 23, 2021 (Item No. 36), the Board approved Vonage's Master Agreement and authorized Purchasing to issue Purchase Orders to Vonage to purchase VoIP telecommunication service, in an amount not to exceed \$550,000, for the period of March 23, 2021, through June 30, 2022. Vonage was recommended to provide this service after review, by HS Information Technology and Support Division, of several vendors and found to be the most affordable. Due to the need for this COVID-19 related service, Purchasing concurred with this purchase based on Vonage providing the lowest cost for these services.

Purchasing supports the non-competitive agreement with Vonage for continuity of operations of the current HS telework model and lowest cost for VoIP.

REVIEW BY OTHERS

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This item has been reviewed by County Counsel (Daniella Hernandez, Deputy County Counsel, 387-5455) on August 14, 2024; Purchasing (Jessica Barajas, Supervising Buyer, 387-2065) on August 14, 2024; Information Technology and Support Division (Ruben Hermosillo, Business Application Manager, 386-3760) on August 13, 2024; Innovation and Technology (Lynn Fyhrlund, Chief Information Officer, 388-5501) on August 20, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst II, 386-9008) on August 13, 2024; Finance (John Hallen, Administrative Analyst, 388-0208) on August 20, 2024; and County Finance and Administration (Cheryl Adams, Deputy Executive Officer, 388-0238) on August 22, 2024.

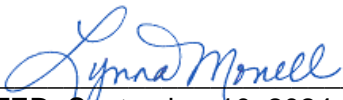
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Record of Action of the Board of Supervisors
San Bernardino County

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: September 10, 2024



cc: HS - Calimlim w/agree
Contractor c/o HS w/agree
File - w/agree
MBA 09/11/2024