

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

August 20, 2024

**FROM**

**LUTHER SNOKE, Chief Executive Officer, County Administrative Office**

**SUBJECT**

Statement of Work and Master Services Agreement with CivicPlus, LLC. for Records Request Management Services

**RECOMMENDATION(S)**

1. Approve the Statement of Work (**Agreement No. 24-796**) with CivicPlus, LLC., to provide records request management services, in an amount not to exceed \$222,534, for the retroactive period beginning July 1, 2024 through June 30, 2029, with automatic annual renewals thereafter, unless canceled by either party with at least 60 days written notice prior to the end of the then-annual term.
2. Approve a non-financial **Master Services Agreement No. 24-797**, including non-standard terms, with CivicPlus, LLC., to provide records request management services for the retroactive period beginning July 1, 2024 and remaining in effect for as long as any Statement of Work is in effect.
3. Authorize the Purchasing Agent or Chief Communications Officer to electronically accept the non-financial Master Services Agreement with CivicPlus, LLC., in Recommendation No. 2. (Presenter: Martha Guzman-Hurtado, Chief Communications Officer, 387-4193)

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

**Improve County Government Operations.**

**Operate in a Fiscally-Responsible and Business-Like Manner.**

**FINANCIAL IMPACT**

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost). Sufficient appropriation for the \$222,534 cost of the Statement of Work with CivicPlus, LLC. (CivicPlus), to provide records request management services is included in the County Administrative Office's (CAO) 2024-25 budget and will be included in future recommended budgets. CivicPlus license costs will be reimbursed by the following departments: Arrowhead Regional Medical Center, Assessor/Recorder/County Clerk, Auditor-Controller/Treasurer/Tax Collector, Behavioral Health, Child Support Services, Children and Family Services, Clerk of the Board, Community Development and Housing, County Counsel, County Library, Environmental Health Services, Homeless Services, Human Resources, Human Services, Land Use Services, Probation, Public Works, Purchasing, Real Estate Services, Regional Parks, Registrar of Voters, Risk Management, and Sheriff/Coroner/Public Administrator. These departments are required to ensure there is adequate appropriation within their respective annual departmental budgets to reimburse the CAO.

Year	Not to Exceed Cost
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2024-25	\$40,273
2025-26	\$42,287
2026-27	\$44,401
2027-28	\$46,621
2028-29	\$48,952
<b>Total</b>	<b>\$222,534</b>

**BACKGROUND INFORMATION**

CivicPlus is a public records request management online portal that streamlines the process of receiving, routing, tracking, and fulfilling public records requests received by San Bernardino County (County). CivicPlus makes it possible for the County to track all requests for public records and ensure they are being handled and fulfilled in compliance with the California Public Records Act (CPRA). CivicPlus also enables County departments, County Counsel, and requesters to communicate with each other about requests, creating an easily accessible record of communications and adding efficiency to the request processing and fulfillment process. CivicPlus assists in the County's efforts to be transparent and provide excellent public service, while avoiding inadvertent and potentially costly violations of CPRA.

This item will approve the Statement of Work with CivicPlus for public records request management services, in an amount not to exceed \$222,534, for the retroactive period beginning July 1, 2024 through June 30, 2029, with automatic annual renewals thereafter, unless canceled by either party with at least 60 days written notice prior to the end of the then annual term. This item is being presented at this time, as the Master Services Agreement (Agreement) was finalized on August 9, 2024 and this is the first available date following the required operational, fiscal, and legal reviews.

This item will approve the Agreement with CivicPlus, including non-standard terms, for public records request management services, for the retroactive period beginning July 1, 2024 and remaining in effect for so long as there is a Statement of Work in effect.

The Purchasing Agent is authorized under County Policy 11-04 to execute the Statements of Work, subject to the Agreement, as the annual amounts are less than \$200,000 per service, per department.

Per County Policy 11-05, contracts containing non-standard terms must be approved by the Board of Supervisors (Board).

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

1. The Agreement is silent on governing law.
  - The County standard contract requires California governing law.
  - **Potential Impact:** Having no specified governing law in the Agreement results in uncertainty over which state's laws will govern the interpretation of the Agreement, and leads to ambiguity in interpretation of the Agreement terms. CivicPlus is a corporation based in Kansas. The Agreement could be interpreted under any state law depending on where the claim is brought,

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including Kansas or California. Any questions, issues or claims arising under this Agreement could require the County to hire outside counsel competent to advise on the applicable state law, which may result in fees that exceed the total Agreement amount.

2. CivicPlus may change the Agreement terms with notice at any time, and the County's continued use after the notice is given constitutes acceptance of the new terms.
  - County Policy 11-06 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 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 an unknown state's law may affect the enforceability of unilateral changes to the terms.
3. The Agreement does not require CivicPlus to notify the County or obtain the County's consent to assign the Agreement.
  - The County standard contract requires that the County must approve any assignment of the contract.
  - Potential Impact: CivicPlus 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 an unknown state law may permit or restrict a party's right to assign without an express provision in the Agreement.
4. 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, an unknown state's 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.
5. The Agreement does not require CivicPlus 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 CivicPlus 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. CivicPlus' maximum liability to the County is limited to the amounts paid by the County for the annual recurring services in the year prior to the claim, without excluding indemnification obligations, gross negligence, willful misconduct or violation of law.

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- 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, an unknown state law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
7. There is no stated venue in the Agreement.
- County Policy 11-05 requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
  - Potential Impact: CivicPlus is located in Kansas City, Kansas. Having no express venue in the Agreement means that Kansas City, Kansas venue could be applied to disputes arising under this Agreement, which may result in additional expenses that exceed the amount of the Agreement.

The County Administrative Office recommends approval of the Agreement with CivicPlus, including the non-standard terms, to allow the County to comply with CPRA regulations.

**PROCUREMENT**

This Agreement is non-competitive based on functional specifications as it is the current platform in use and, as such, hosts historical data related to record requests received by the County. Continuing services with CivicPlus will ensure that the County maintains continuity of services. The Purchasing Department supports the non-competitive procurement for services with CivicPlus.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on August 12, 2024; Purchasing (Ariel Gill, Supervising Buyer, 387-2070) on August 12, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst II, 386-9008) on August 12, 2024; Finance (Erika Rodarte, Administrative Analyst, 387-4919) on August 12, 2024; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on August 15, 2024.

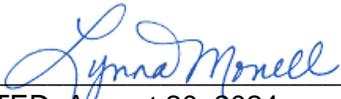
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Record of Action of the Board of Supervisors  
San Bernardino County

**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: August 20, 2024



cc: CAO - Wert w/agrees  
Contractor - c/o CAO w/agree  
File - w/agree  
CCM 08/26/2024