

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

April 21, 2026

FROM

DON LE, Interim Chief Information Officer, Innovation and Technology Department

SUBJECT

Non-financial Terms of Service with SMTP2GO, Inc. for Email Delivery Services

RECOMMENDATION(S)

1. Approve the non-financial Terms of Service (**Agreement No. 26-298**), including non-standard terms, with SMTP2GO, Inc. for email delivery services beginning on April 21, 2026, and continuing until terminated by either party.
2. Authorize the Chief Information Officer or Assistant Chief Information Officer to electronically accept the Terms of Service referenced in Recommendation No. 1 and any subsequent non-substantive amendments, subject to County Counsel review.
3. Direct the Chief Information Officer or Assistant Chief Information Officer to transmit any subsequent non-substantive amendments that are electronically accepted to the Clerk of the Board of Supervisors within 30 days of acceptance.

(Presenter: Don Le, Interim 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 Terms of Service (TOS), are non-financial in nature and does not commit the County to make any purchases. If future purchases are made under the TOS, the Innovation and Technology Department (ITD) will adhere to County purchasing policies and return to the Board of Supervisors (Board) for approval, if necessary.

BACKGROUND INFORMATION

ITD's Enterprise Infrastructure Division (EID) manages the County's email relay services for most County departments. When an email is sent, the simple mail transfer protocol (SMTP) relay service acts as a hub, receiving the email from the sender's server and forwarding it to the recipient's server. This process involves verifying sender's credentials and ensuring compliance with email protocols. EID supports these services, which allows office devices like copiers to send scanned documents by email and supports automated system-generated messages critical to daily operations.

Microsoft Corporation is retiring its built-in SMTP service, previously used by the County for email relay services, requiring implementation of an alternative email relay solution. ITD currently uses SendGrid for email relay services, which supports application-based email delivery; however, the County's Konica Minolta, Inc., copiers have built-in technical limitations that prevent them from meeting SendGrid's authentication requirements. SMTP2GO, Inc.

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(SMTP2GO) provides a compatible cloud-based SMTP relay solution that works with the County's existing copier equipment, ensuring continued scan-to-email functionality, combined email and short message system (SMS) capabilities, and uninterrupted operations. ITD evaluated other SMTP relay solutions and SMTP2GO provides advanced features that are not available from other solutions. ITD will continue evaluating its long-term strategy to determine whether consolidating to a single SMTP provider is operationally appropriate.

SMTP2GO is headquartered in Christchurch, New Zealand, with no apparent presence within the United States, and the TOS is governed by the laws of New Zealand. County Counsel is unable to approve the TOS as to legal form because County Counsel is not sufficiently knowledgeable about the requirements for forming an enforceable agreement under New Zealand law. The non-standard terms in this contract include:

1. There is no provision in the TOS 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: SMTP2GO is headquartered in Christchurch, New Zealand, and the terms and conditions of the TOS are governed by New Zealand law. County Counsel is unable to approve the TOS as to legal form because County Counsel is not sufficiently knowledgeable about the requirements for forming an enforceable agreement under New Zealand Law.
2. SMTP2GO provides the service "as is" and disclaims all warranties of any kind.
 - County Policy 11-05 requires a contractor to fully warrant its services and products.
 - Potential Impact: SMTP2GO is headquartered in Christchurch, New Zealand, and the terms and conditions of the TOS are governed by New Zealand law. County Counsel is unable to approve the TOS as to legal form because County Counsel is not sufficiently knowledgeable about the requirements for forming an enforceable agreement under New Zealand Law.
3. The TOS do not require SMTP2GO 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: SMTP2GO is headquartered in Christchurch, New Zealand, and the terms and conditions of the TOS are governed by New Zealand law. County Counsel is unable to approve the TOS as to legal form because County Counsel is not sufficiently knowledgeable about the requirements for forming an enforceable agreement under New Zealand Law.
4. The TOS do not require SMTP2GO 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 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

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any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services.

- Potential Impact: SMTP2GO is headquartered in Christchurch, New Zealand, and the terms and conditions of the TOS are governed by New Zealand law. County Counsel is unable to approve the TOS as to legal form because County Counsel is not sufficiently knowledgeable about the requirements for forming an enforceable agreement under New Zealand Law.

5. SMTP2GO disclaims all liability for any damages resulting from the County's use of the services.

- The County standard contract does not include a limitation of liability.
- Potential Impact: SMTP2GO is headquartered in Christchurch, New Zealand, and the terms and conditions of the TOS are governed by New Zealand law. County Counsel is unable to approve the TOS as to legal form because County Counsel is not sufficiently knowledgeable about the requirements for forming an enforceable agreement under New Zealand Law.

Per County Policy 11-05, nonstandard contract language with foreign governing law must be approved by the Board. Because County Counsel cannot advise on New Zealand law, there is no specific analysis of possible legal impacts from any of the TOS provisions, including those that appear to be inconsistent with County Policy 11-05. If the Board approves the TOS, it will be subject to the exclusive jurisdiction of the courts located in New Zealand to resolve any legal matter arising from the TOS.

ITD recommends approving SMTP2GO's TOS including non-standard terms to enable ITD to acquire an SMTP relay service compatible with our current copiers.

PROCUREMENT

Not Applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Kaleigh Ragon, Deputy County Counsel, 387-5455) on April 13, 2026; Purchasing (Joni Yang, Buyer III, 387-2463) on March 26, 2026; Risk Management (Stephanie Mead, Staff Analyst II Trainee, 386-9044) on March 26, 2026; and County Finance and Administration (Ivan Ramirez, Administrative Analyst, 387-4020) on April 1, 2026.

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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  _____
DATED: April 21, 2026



cc: IT - Thomas w/agree
Contractor - c/o IT w/agree
File - w/agree
MBA 04/23/2026