

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

March 1, 2022

FROM

LARRY AINSWORTH, Chief Information Officer, Innovation and Technology Department

SUBJECT

Registration Services Agreement with American Registry for Internet Numbers, LTD

RECOMMENDATION(S)

Approve a Registration Services **Agreement No. 22-139** and Number Resource Policy Manual, including non-standard terms, with American Registry for Internet Numbers, LTD for Internet Protocol and Autonomous Systems Numbers registration in purchase amounts as authorized by County Policy effective on the date the County first receives services continuing for a period of one year, automatically renewing annually thereafter until terminated by either party.
(Presenter: Larry Ainsworth, 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 the Registration Services Agreement and Number Resource Policy Manual (Agreement) with American Registry for Internet Numbers, LTD (ARIN) will not result in the use of Discretionary General Funding (Net County Cost). The Agreement is non-financial in nature and does not commit the County to make any purchases. If future purchases are made in conjunction with this Agreement, 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 manages the County's internet access services via the Wide Area Network. Internet Protocol (IP) addresses are identifiers that allow information to be sent between devices on a network and provide a way of differentiating between different computers, routers, and websites. Autonomous System Numbers (ASN) are a unique identifier for one or more IP addresses on a network to efficiently route traffic from a clearly defined routing process. ITD uses ARIN services to register IP addresses with the global information database for network records and to register ASNs with the regional internet registry. This service ensures that the County retains IP address presence for internet routing and connectivity required for countywide resources such as websites, email, end devices and other hosted systems within the County.

The Registration Services Agreement and Number Resource Policy Manual is ARIN's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. The non-standard and missing terms include the following:

1. Governing law is the Commonwealth of Virginia.
 - The County standard contract requires California governing law.
 - Potential Impact: The Agreement will be interpreted under Virginia law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on Virginia law, which may result in fees that exceed the total Agreement amount.
2. ARIN may amend, supplement, restate or otherwise modify the policies in its sole discretion effective immediately, and may modify the terms of the Agreement with written notice of the change, including publishing on the website. Continued use of the services after notice or publication constitutes acceptance.
 - 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: ARIN may change the Terms and Conditions 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. County Counsel cannot advise on whether and to what extent Virginia law may affect the enforceability of unilateral changes to the terms.
3. All disputes must be resolved by binding arbitration, including where ARIN disputes the County's assertion of termination for cause.
 - The County standard contract does not require arbitration.
 - Potential Impact: The Agreement requires binding arbitration for all disputes between the parties, including ARIN's dispute that the County may terminate the Agreement for cause. Disputes that might otherwise be settled in small claims court would incur arbitration costs that would exceed the costs of a small claims action. Arbitration decisions are not appealable.
4. The Agreement does not require ARIN to indemnify the County, 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 any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services.
 - Potential Impact: ARIN is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from ARIN'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 ARINs 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 Virginia law may allow the

County to require ARIN to defend or indemnify it absent an express provision in the Agreement.

5. The County is required to indemnify, defend and hold ARIN harmless from third party claims related to authorized or unauthorized access to or use of any service, any authorized or unauthorized access to or use of the service by anyone who acquired authorized or unauthorized access to the service through the County, and/or any breach of the service terms.
 - The County standard contract does not include any indemnification or defense by the County of a Contractor.
 - Potential Impact: By agreeing to indemnify ARIN, 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 ARIN without such limitations and the County would be responsible to defend and reimburse ARIN for costs, expenses, and damages, which could exceed the total Agreement amount. County Counsel cannot advise on, whether and to what extent, Virginia law may limit or expand this Agreement term.
6. The Agreement does not require ARIN to meet the County's insurance standards as required pursuant to County Policy 11-07.
 - The County Policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and set forth in the County standard contract.
 - Potential Impact: The County has no assurance that ARIN 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.
7. ARIN's maximum aggregate liability to the County is the greater of the amount paid by the County for the services during the six months immediately preceding the event giving rise to the claim or one hundred dollars.
 - 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, Virginia law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
8. The Agreement is automatically renewing.
 - County Policy 11-06SP does not permit indefinite term or automatically renewing contracts 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.
9. Venue for arbitration proceedings is Washington, D.C. or at a mutually agreed location. Temporary Restraining Orders, Preliminary Injunctions and other injunctive relief may be filed in the U.S. District Court of the Eastern District of Virginia or the Circuit Court for Fairfax County, Virginia.
 - The County standard contract requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.

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- Potential Impact: Having a venue in Washington, D.C. or Fairfax County Virginia may result in additional expenses that exceed the amount of the Agreement.

10. The services are provided “as is” with all risks and faults.

- There is no warranty requirement in the County standard contract. The County expects its vendors and service providers to fully warrant the products and services they provide to the County.
- Potential Impact: The County’s use of the software is solely at its own risk. County Counsel cannot advise on, whether and to what extent, Virginia law may limit or expand the disclaimers of warranty to the extent prohibited by applicable law.

ITD recommends approval of the Agreement with ARIN, including non-standard terms, to continue necessary internet routing and connectivity for County resources.

PROCUREMENT

The Agreement, including non-standard terms, will be used to accompany future purchases to be approved, as necessary, per County Policy 11-04 Procurement of Goods, Supplies, Equipment and Services.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5455) on February 7, 2022; Purchasing (Tevan Stremel, Buyer III, 387-2098) on February 3, 2022; Risk Management (Victor Tordesillas, Director, 386-8623) on February 7, 2022; Finance (Sofia Almeida, Administrative Analyst, 387-5402) February 10, 2022; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on February 11, 2022.

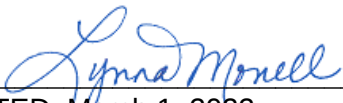
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: March 1, 2022



cc: ITD- Radimaker w/agree
Contractor- C/O ITD w/agree
File- w/agree
LA 03/3/2022