

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

June 28, 2022

FROM

LARRY AINSWORTH, Chief Information Officer, Innovation and Technology Department

SUBJECT

Master Services Agreement with Web.com Group, Inc., for Domain Names

RECOMMENDATION(S)

Approve Master Services **Agreement No. 22-526**, including non-standard terms, with Web.com Group, Inc., for domain name registration services for purchase amounts as authorized by County Policy for the period beginning June 28, 2022, and continuing until terminated. (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 this item will not result in the use of Discretionary General Funding (Net County Cost). The Master Services Agreement (Agreement) is non-financial in nature and does not commit the County to make any purchases. If future purchases are made under 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 has utilized Network Solutions, LLC, a subsidiary of Web.com Group, Inc. (Web.com) domain registration services to provide centralized management, purchase, and renewals for custom website domain names requested by ITD and supported County departments since at least 2017. Examples of these domains are sbcovid19.com, sbcountyelections.com, and countywideplan.com.

The Agreement with Web.com is Web.com's standard commercial agreement, which includes terms that differ from the standard County contract and omit certain County standard contract terms. Web.com is unwilling to negotiate these terms. The non-standard and missing terms include the following:

1. Governing law is the State of Florida.
 - The County standard contract requires California governing law.
 - Potential Impact: The Agreement will be interpreted under Florida law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on Florida law, which may result in fees that exceed the total Agreement amount.

**Master Services Agreement with Web.com Group, Inc., for Domain
Names
June 28, 2022**

2. Web.com may, at its sole and absolute discretion, unilaterally change the Agreement and incorporated policies, agreements or notices, effective upon posting to the website. Continued use of the services constitutes the County's acceptance. In addition, all renewals are subject to the then-current Terms and Conditions.
 - 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: 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 Florida law may affect the enforceability of unilateral changes to the terms.
3. Web.com may assign its right and obligations under the Agreement without notice and without the County's consent.
 - The County must approve any assignment of the contract.
 - Potential Impact: Web.com 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 would 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 Florida law may permit or restrict a party's right to assign without an express provision in the Agreement.
4. The County agrees to pay Web.com's attorneys' fees and costs associated with enforcing the venue in Duval County.
 - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: If a lawsuit is filed anywhere except Duval County, Florida, Web.com is entitled to recover its attorneys' fees and costs in enforcing this Agreement term, which could exceed the total Agreement amount.
5. The Agreement does not require Web.com to indemnify the County, as required by County Policy 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 any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services.
 - Potential Impact: If the County is sued for any claim, including intellectual property infringement based on its use of Web.com's 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 Florida law may allow the County to require Web.com to defend or indemnify it absent an express provision in the Agreement.

Master Services Agreement with Web.com Group, Inc., for Domain Names
June 28, 2022

6. The County is required to indemnify Web.com against all claims arising under the Agreement, breach of the Agreement, breach of County's warranties, representation and obligations, use of the services, the website, violation of third party rights, application and registration of a domain name.
 - The County standard contract does not include any indemnification or defense by the County of a Contractor.
 - Potential Impact: By agreeing to indemnify Web.com, 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 Web.com without such limitations and the County would be responsible to defend and reimburse Web.com for costs, expenses, and damages, which could exceed the total Agreement amount. County Counsel cannot advise on, whether and to what extent, Florida law may limit or expand this Agreement term.

7. The Agreement does not require Web.com 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 Web.com 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 limitation of liability is extensive in what types of claims are excluded. To the extent that any claim cannot be excluded by law, Web.com's maximum liability to the County is \$500, without exception.
 - 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, Florida law may limit or expand the exclusion of limits to the extent prohibited by applicable law.

9. The County must bring any claim against Web.com within one year after the claim arises or it is permanently barred.
 - The County standard contract does not include a limit on the time to bring action.
 - Potential Impact: Limiting the County's ability to bring suit to one year may amount to a waiver of the Statute of Limitations for claims and shortens the period of time in which the County may file a lawsuit under the Agreement. Web.com's right to bring claims is not similarly limited, so Web.com may bring claims any time within the Statute of Limitations. County Counsel cannot advise on, whether and to what extent, Florida law may allow parties to contractually agree to override the Statute of Limitations on claims.

10. Payment is due 30 days from date of invoice. Late payment may result in suspension or cancellation of the service, and late charges of 1.5% per month. If the account is sent to collection, the County agrees to pay the costs of collection, and additional fees, assessed by Web.com in its discretion.
 - County standard payment terms are Net 60 days with no interest or late payment penalties.

Master Services Agreement with Web.com Group, Inc., for Domain Names
June 28, 2022

- Potential Impact: County standard processing time is 60 days or more. Failing to pay within 30 days from the date of invoice will result in a material breach of the Agreement, which would allow Web.com to suspend or terminate the Agreement and seek other legal remedies, including charging the County interest at a rate of 1.5% per month, costs of collection and attorneys' fees, which would exceed the Agreement amount.
11. The term of the Agreement is indefinite. Unless otherwise specified in the order process, the service is for a one-year initial term, renewing for successive terms. While the County may specify no automatic renewal, Web.com reserves the right to override this and activate the auto-renew service.
- 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 until terminated by either party.
12. There is no termination for convenience. The County may only terminate the service at the end of a billing period. Payments are non-refundable. Any attempt by the County to terminate prior to the completion of the applicable term may result in Web.com assessing an early termination fee in its sole and absolute discretion and without notice.
- 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: Upon any termination by either party regardless of cause, the County is required to pay an early termination fee, assessed in Web.com's sole and absolute discretion, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.
13. Venue is in the appropriate federal or state court in Duval County, Florida.
- The County standard contract requires venue for disputes in Superior Court of California, San Bernardino County, San Bernardino District.
 - Potential Impact: Having a venue in Duval County, Florida may result in additional expenses that exceed the amount of the Agreement.
14. Web.com provides no warranty. Use of the services are solely at the County's own risk. The services are provided, "AS IS" and "AS AVAILABLE".
- 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, Florida law may limit or expand the disclaimers of warranty to the extent prohibited by applicable law.

ITD recommends approval of the Agreement, including the non-standard terms, to allow ITD to purchase and register domain names.

**Master Services Agreement with Web.com Group, Inc., for Domain
Names
June 28, 2022**

PROCUREMENT

The Agreement, including non-standard terms, will be used to accompany future purchase orders 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 June 2, 2022; Purchasing (Tevan Stremel, Buyer III, 387-2098) on May 31, 2022; Risk Management (Victor Tordesillas, Director, 386-8623) on May 31, 2022; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on June 13, 2022.

Master Services Agreement with Web.com Group, Inc., for Domain Names
June 28, 2022

Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: June 28, 2022



cc: IT- Mancebo w/agree
Contractor- C/O IT w/agree
File- w/agree
LA 07/8/2022