

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

June 28, 2022

FROM

LEONARD X. HERNANDEZ, Chief Executive Officer, County Administrative Office

SUBJECT

Agreement with Granicus for Email Subscription Services

RECOMMENDATION(S)

Approve a Master Subscription **Agreement No. 22-510** and Proposal with Granicus, LLC, including non-standard terms, to provide hosted e-mail subscription services in an amount not to exceed \$304,825.60 from July 1, 2022 to June 30, 2025, provided the County exercises its right to terminate 90 days prior to the end of the term.

(Presenter: David Wert, Public Information Officer, 387-4842)

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). The total Agreement will not exceed \$304,825.60. Sufficient appropriation is included in the 2022-23 County Administrative Office (CAO) budget and will be included in subsequent recommended budgets.

Year	Cost
Year 1 (2022-23)	\$94,816.51
Year 2 (2023-24)	\$101,453.67
Year 3 (2024-25)	\$108,555.42
Grand Total	\$304,825.60

BACKGROUND INFORMATION

On June 13, 2006 (Item No. 104), the Board of Supervisors (Board) approved a one-year agreement with GovDelivery, Inc., now known as Granicus, LLC (Granicus), and authorized subsequent automatic renewals with a 5% annual increase for an indefinite period, to provide hosted e-mail subscription services as a means of providing information about County government programs, services, and activities directly to the public with minimal to zero impact on the County's information technology infrastructure. The service allows email users to subscribe to a variety of County internet sites and types of information to receive email notifications when new content within their individual areas of interest is available. Subscriptions include emergency notifications, meeting agendas, requests for proposals, newsletters, and news releases.

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On June 2, 2015 (Item No. 41), the Board approved a one-year non-competitive agreement with GovDelivery, Inc. for the period July 1, 2015 through June 30, 2016, authorizing the Chief Executive Officer (CEO) to exercise the option to extend the services for four one-year periods upon satisfactory performance. All options to extend the agreement were exercised, with the last option period ending June 30, 2020.

On June 23, 2020 (Item No. 39), the Board approved a one-year non-competitive agreement with Granicus, for the period July 1, 2020 through June 30, 2021, authorizing the CEO the option to extend the services for a one-year period upon satisfactory performance. The option to extend the agreement was exercised with the option period ending June 30, 2022. The recommended Master Service Agreement and Proposal (collectively "Agreement") will continue the services from July 1, 2022 through June 30, 2025.

The County is using the Granicus platform to provide COVID-19 information to more than 230,000 residents, journalists, and city officials. It is also used by departments to promote awareness and communicate programs and services provided by the County. It is not cost effective and would cause an interruption of communication to public subscribers if this Agreement is not renewed. The recommended agreement for the period of July 1, 2022 through June 30, 2025, is a non-competitive agreement based on meeting the County's needs for email subscription services among multiple topics.

Per County Policy 11-05, contracts containing non-standard terms must be approved by the Board. The Agreement with Granicus is the vendor's contract and includes terms that differ from the standard County contract. The non-standard terms include the following:

1. Granicus may assign the Agreement without the County's consent in the event of any merger, stock purchase, asset purchase or similar event.
 - The County standard contract requires approval of any assignment of the Agreement.
 - Potential Impact: Granicus 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.
2. The County is granting Granicus a perpetual, noncancelable, worldwide, non-exclusive license to utilize any data, on an anonymous or aggregate basis only, that arises from the use of Granicus.
 - The County standard contract does not grant third parties perpetual use of County data.
 - Potential Impact: It is unknown how Granicus may use this data; however it should be on an anonymous or aggregate basis only.
3. The service is provided "as is" and "as available", without any warranty of any kind.
 - 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 provided to the County.
 - Potential Impact: The County's use of the software services is solely at its own risk.
4. If the County is requested to disclose any Confidential Information (as defined in the Agreement) it is required to notify Granicus as promptly as practicable so Granicus may

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seek an appropriate protective order or waiver. Granicus is similarly required to notify the County if Granicus is required to disclose Confidential Information.

- The County standard contract does not contain notification requirements for disclosure of information.
 - Potential Impact: If the County discloses Confidential Information, without notifying Granicus, it may be subject to legal risk.
5. The term of the Agreement is automatically renewing on an annual basis unless the County gives written notice 90 days prior to the end of the current order term.
- County Policy 11-06SP does not permit an 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, unless it exercises its termination rights.
6. Governing law is Minnesota.
- The County standard contract requires California governing law.
 - Potential Impact: The Agreement will be interpreted under Minnesota law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on Minnesota law, which may result in fees that exceed the total Agreement amount.
7. Venue is the state and federal courts in Ramsey County, Minnesota.
- 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 Ramsey County, Minnesota may result in additional expenses that exceed the amount of the Agreement.
8. Granicus' maximum liability to the County is limited to the fees paid by the County to Granicus during the six months immediately preceding the date Granicus is notified of the claim for direct damages. Granicus is not responsible for special, indirect, punitive, incidental or consequential damages.
- The County standard contract does not include a limitation of liability.
 - Potential Impact: County Counsel cannot advise on whether and to what extent Minnesota law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
9. Granicus limits its indemnification obligation to some claims for intellectual property infringement, but excludes indemnity for any (i) modifications by County; (ii) modification by Granicus at County's request; or (iii) County's use of the products not in compliance with the Agreement.
- The County standard contract indemnify provision requires the contractor to indemnify, defend, and hold County harmless from third party claims arising out for 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.

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- Potential Impact: County Counsel cannot advise on whether and to what extent Minnesota law may allow the County to require Granicus to defend or indemnify it absent an express provision in the Agreement.
10. The County is required to defend, indemnify, and hold Granicus harmless from and against claims and losses from the County use or modification of Granicus products and services, County content, or County violation of law.
- The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: County Counsel cannot advise on whether and to what extent Minnesota law may limit or expand this Agreement term.
11. Payment terms are Net 30.
- County standard payment terms are Net 60 days.
 - Potential Impact: County standard processing time is 60 days. Failing to pay Net 30 may result in Granicus terminating the Agreement and seeking other legal remedies.
12. Granicus may change the terms in the Master Subscription Agreement with only notice to County via email or posting on the Granicus website.
- The County standard contract does not allow for a change in the terms without written approval by both parties.
 - Potential Impact: The terms and conditions may change, creating additional risk and potentially resulting in other non-standard contract terms that are revealed at a later date after the Board has approve the Agreement.

The County Administrative Office recommends approval of the Agreement with Granicus, including the non-standard terms, to continue to provide valuable County services.

PROCUREMENT

This Agreement is non-competitive based on compatibility and will ensure that the County maintains continuity of services to avoid an interruption of communication to the public on County programs and services. County Purchasing supports the non-competitive procurement for services with Granicus.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Julie Surber, Principal Assistant County Counsel, 387-5455) on June 24, 2022; Purchasing (Michelle Churchill, Supervising Buyer, 387-2070) on June 24, 2022; Finance (Erika Rodarte, Administrative Analyst, 387-4919) on June 24, 2022; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5426; Robert Saldana, Deputy Executive Officer, 387-4342; and Matthew Erickson, County Chief Financial Officer, 387-5423) on June 24, 2022.

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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: CAO- Wert w/agree
Contractor- C/O CAO w/agree
File- w/agree
LA 07/7/2022