



San Bernardino County

Legislation Text

File #: 4983, Agenda Item #: 18

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

October 26, 2021

FROM

BOB DUTTON, Assessor-Recorder-County Clerk

SUBJECT

Agreements with GoDaddy.com, LLC for Domain Name Registration and Website Hosting Services

RECOMMENDATION(S)

1. Approve Universal Terms of Service Agreement with GoDaddy.com, LLC, including non-standard terms, to be accepted electronically, for use of the GoDaddy.com website and the purchase or access of products and services through the website for a five-year period from October 26, 2021, through October 25, 2026.
2. Approve Website Services Agreement with GoDaddy.com, LLC, including non-standard terms, to be accepted electronically, for cloud-hosted tool for designing, creating, managing and promoting the Department's online presence for an indefinite period, cancelable at any time.
3. Approve Domain Name Registration Agreement with GoDaddy.com, LLC, including non-standard terms, to be accepted electronically, for future domain name registration services for as long as the County has any domain name registered through GoDaddy.
4. Approve Hosting Agreement with GoDaddy.com, LLC, including non-standard terms, to be accepted electronically, for future domain name registration services for a five-year period of October 26, 2021, through October 25, 2026.
5. Approve Domain Name Transfer Agreement with GoDaddy.com, LLC, including non-standard terms, to be accepted electronically, for one-time domain name registration transfer services to transfer two domain names from BlueHost, Inc. to GoDaddy.com, LLC.
6. Designate the Assessor-Recorder-County Clerk or the Departmental IS Administrator, to create online accounts and accept online agreements as they pertain to website hosting services with GoDaddy.com, LLC, subject to review by County Counsel.

(Presenter: Bob Dutton, Assessor-Recorder-County Clerk, 382-3254)

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 Discretionary General Funding (Net County Costs). The GoDaddy.com, LLC (GoDaddy) online terms and conditions are non-financial in nature and do not commit the County to make any purchases. When future purchases are made under these terms and agreements, the Assessor-Recorder-County Clerk Department (ARC) will adhere to County purchasing policies and return to the Board of Supervisors (Board) for approval, if necessary.

BACKGROUND INFORMATION

GoDaddy is an Internet Corporation for Assigned Names and Numbers ("ICANN") accredited registrar of certain domain names, including the general top-level domain, .org. ICANN is a not-for-profit public-benefit corporation with participants from all over the world, which manages the coordination of the Domain Name System (DNS) known as the Internet Assigned Numbers Authority (IANA). ICANN was founded in 1998 and grew out of a U.S. Government commitment to transfer the policy and technical management of the DNS to a non-profit corporation based in the U.S. with global participation. GoDaddy's Domain Name Registration Agreement requires compliance with ICANN requirements, standards, policies, procedures, and practices for registering and transferring domain names.

ARC holds registrations for three .org domain names. ARC registered sbcountyarc.org through GoDaddy, and uses GoDaddy to host this domain as ARC's public-facing website. This domain registration is set to expire on October 27, 2021. ARC intends to renew this domain with GoDaddy for an additional year.

The other two domain names, sbcarc.org and sbc-arc.org, are registered through and hosted by another ICANN accredited registrar, BlueHost, Inc. (BlueHost), and are set to expire on February 14, 2022. These domains currently provide ARC personnel with Microsoft Office 365 accounts, allowing them to login and use Microsoft products such as Teams, Word, Outlook, and Excel. In an effort to centralize management of its three domains, ARC intends to transfer the sbcarc.org and sbc-arc.org domains to GoDaddy.

GoDaddy's Universal Terms of Service, Domain Name Registration Service, Hosting Service, Website Services Agreement, and Domain Name Transfer Service are GoDaddy's standard commercial contracts conforming with ICANN requirements, standards, policies, procedures, and practices for registering and transferring domain names. These agreements include 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. GoDaddy may, in its sole and absolute discretion, change or modify the various contract terms and any policies, at any time, such changes or modifications become effective immediately upon posting to the website, and any County use of the website or the services after such changes or modifications have been made constitute acceptance of these revised terms.
 - The County standard contract requires that any changes to the contract to 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 the approval of the new terms by the Board.
2. Except for disputes governed by the ICANN Uniform Domain Name Dispute Resolution Policy and small claims actions, all disputes must be settled by binding arbitration. The Federal Arbitration Act governs the interpretation and enforcement of the arbitration. The County may bring an individual action in the small claims court of your state or municipality if the action is within that court's jurisdiction and is pending only in that court.
 - The County standard contract does not require arbitration.
 - Potential Impact: 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.
3. No restrictions on assignment.
 - The County must approve any assignment of the contract.

- **Potential Impact:** GoDaddy may assign the contract 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.
4. Under the Universal Terms of Service and the Website Services Agreement, the County agrees to protect, defend, indemnify and hold harmless GoDaddy and its officers, directors, employees, agents, and third-party service providers from all liabilities incurred by GoDaddy arising from the County's use of and access to the website or services, violation of any provision of the policies or agreements, and/or violation of any third-party right.
- The County standard contract does not include any indemnification or defense by the County of a Contractor.
 - **Potential Impact:** By agreeing to indemnify GoDaddy, 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 GoDaddy without such limitations and the County would be responsible to defend and reimburse GoDaddy for costs, expenses, and damages, which could exceed the total contract amount.
5. Under the Domain Name Registration Service Agreement, the County agrees indemnify, defend and hold harmless the third party Registry Operator and Registry Service Provider and their subcontractors, subsidiaries, affiliates, divisions, shareholders, directors, officers, employees, accountants, attorneys, insurers, agents, predecessors, successors and assigns, from and against all claims and liabilities arising out of the County's domain name registration, and/or the violation of any applicable terms or conditions governing the registration. The County may not enter into any settlement or compromise of any such indemnifiable claim without Registrar's or Registry Operator's prior written consent.
- The County standard contract does not include any indemnification or defense by the County of a Contractor.
 - **Potential Impact:** By agreeing to indemnify the third-party beneficiaries of the contract, 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 GoDaddy without such limitations and the County would be responsible to defend and reimburse GoDaddy for costs, expenses, and damages, which could exceed the total contract amount.
6. Under the Hosting Service Agreement, the County agrees indemnify, defend and hold harmless GoDaddy against claims arising from the County's use or misuse of the third-party software provided by GoDaddy, and the providers of the third-party software are third-party beneficiaries to the Hosting Service Agreement for purposes of enforcing their rights under Hosting Service Agreement.
- The County standard contract does not include any indemnification or defense by the County of a Contractor.
 - **Potential Impact:** By agreeing to indemnify GoDaddy, 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 GoDaddy without such limitations and the County would be responsible to defend and reimburse GoDaddy for costs, expenses, and damages, which could exceed the total contract amount.
7. The contract does not require GoDaddy 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 contract does not include County standard insurance requirements. This means that the County has no assurance that GoDaddy will be financially responsible for claims

that may arise from the County's use of the website or services, which could result in expenses to the County that exceed the total contract amount.

8. GoDaddy disclaims all liability for County's use of the website and services, and if such liability cannot be disclaimed, limits its maximum liability to \$10,000.00.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the contract amount leaving the County financially liable for the excess. In addition, the County's liability under the contract is not similarly limited.
9. To the extent permitted by law, any claim or dispute must be filed within one year from the date when the claim could first be filed in small claims or the notice of dispute could first be filed in arbitration or be 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 or arbitration to one-year amounts 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 contract.
10. The Domain Name Registration Agreement has an indefinite term lasting for as long as the County has a domain name registered through GoDaddy.
 - 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 contract and the County is indefinitely bound to the terms and conditions of the contract.
11. Any controversy excluded from the arbitration procedure (other than an individual action filed in small claims court) shall be filed only in the Superior Court of Maricopa County, Arizona, or the United States District Court for the District of Arizona.
 - The County standard contract requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: Venue in Maricopa County, Arizona may result in additional expenses that exceed the amount of the contract.
12. Use of the website and services are at the County's sole risk and are provided by GoDaddy "AS IS", "AS AVAILABLE" and "WITH ALL FAULTS".
 - There is no warranty requirement in the County standard contract. 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.

ARC recommends approval of these agreements, including the non-standard terms, as they will support ARC operations by facilitating continued use of the department's public facing website and the ability to transfer two domain names from BlueHost to GoDaddy, which will consolidate centralized management and administration of ARC's hosted domain names.

PROCUREMENT

The GoDaddy online terms and conditions listed above, including non-standard terms, will be used to accompany future purchases to be approved, in accordance with County Policy 11-04, Procurement of Goods, Supplies, Equipment, and Services.

County Policy 11-05 requires departments to obtain Board approval for agreements with non-standard terms

and conditions.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5455) on October 4, 2021; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on October 4, 2021; Risk Management (Victor Tordesillas, Director, 386-8621) on October 4, 2021; Innovation and Technology Department (Larry Ainsworth, Chief Information Officer, 388-5501) on October 4, 2021; Finance (Carl Lofton, Finance Analyst, 387-5404) on October 8, 2021; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-4342) on October 8, 2021.