

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

**September 24, 2024**

**FROM**

**LYNN FYHRLUND, Chief Information Officer, Innovation and Technology Department**

**SUBJECT**

Agreement with Toshiba International Corporation for Uninterruptible Power System Maintenance Services

**RECOMMENDATION(S)**

Approve **Service Agreement No. 24-895**, including non-standard terms, with Toshiba International Corporation, in the amount of \$25,000 for Uninterruptible Power System maintenance, for the period of October 1, 2024 through September 30, 2025.

(Presenter: Lynn Fyhrlund, 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 Innovation and Technology Department (ITD) operating costs are recovered via service rates approved annually by the Board of Supervisors (Board). The one-year cost of maintenance for the Uninterruptible Power System (UPS) is \$25,000. Sufficient appropriation is included in the ITD Computer Operations 2024-25 budget.

**BACKGROUND INFORMATION**

ITD's Computer Operations division provides operation and maintenance of information systems for the County. ITD utilizes Toshiba International Corporation (Toshiba) UPS for the protection of the sensitive computer equipment located at the High Desert Government Center (HDGC) in Hesperia. UPS is a type of continual power system that provides backup power from a battery in the event of power loss to keep the equipment operational. As the HDGC environment requires constant uptime, ITD needs the Toshiba batteries serviced and replaced regularly so that power is not interrupted. Contracting directly with Toshiba will ensure the County receives technical support and battery replacement as required for the course of the agreement. ITD has used Toshiba UPS maintenance services at the HDGC since 2013 under Toshiba's Service Agreement (Agreement).

On March 28, 2023 (Item No. 30), the Board approved Agreement Nos. 23-240, 23-241, and 23-242 with Toshiba, in the amount of \$39,500, \$82,800, and \$39,500, respectively for UPS maintenance at Miro Way, Gilbert Street, and Rialto Avenue respectively, for the period of April 1, 2023 through March 31, 2028. These locations are separate from the HDGC and are governed by the agreements noted above.

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The Agreement is Toshiba's standard commercial contract, which include terms that differ from the standard County contract and omit certain County standard contract terms. Toshiba and the County negotiated the terms of the Agreement in 2013; however, the terms have been recently identified as containing non-standard and missing terms, which require Board approval to continue services for the October 2024 renewal. The non-standard and missing terms include the following:

1. The Agreement does not require Toshiba 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: Toshiba is not required to defend, indemnify, or hold the County harmless from any claims, including indemnification for claims arising from Toshiba'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 Toshiba's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount.
2. The Agreement does not require Toshiba 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 Toshiba will be financially responsible for claims that may arise from the County's use of the goods or services, which could result in expenses to the County that exceed the total Agreement amount.
3. Toshiba's maximum liability to the County is limited to 100% of the payment received by Toshiba for each quote without exclusion.
  - 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.

ITD recommends approval of the Agreement with Toshiba, including non-standard terms, to replace Toshiba's batteries and ensure that the HDGC's parts, software, and battery cabinets have the technical support needed to maintain peak efficiency.

**PROCUREMENT**

Toshiba's UPS is the industry's leader and has become standardized throughout ITD's data centers to maintain consistency and formatting. As such, Toshiba is the sole source provider for all Toshiba certified maintenance and Toshiba original equipment manufacturer parts. The Purchasing Department concurs with the non-competitive purchase of these services from Toshiba based on continued technical support.

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**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on August 23, 2024; Purchasing (Jessica Barajas, Supervising Buyer, 387-2065) on August 23, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst II, 386-9008) on August 23, 2024; Finance (Iliana Rodriguez, Administrative Analyst, 387-4205) on September 9, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on September 9, 2024.

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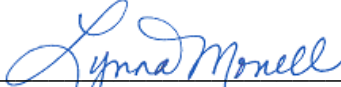
Record of Action of the Board of Supervisors  
San Bernardino County

**APPROVED (CONSENT CALENDAR)**

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

Lynna Monell, CLERK OF THE BOARD

BY



DATED: September 24, 2024



cc: IT - Thomas w/agree  
Contractor - c/o IT w/agree  
File - w/agree

CCM 09/25/2024