

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

March 28, 2023

FROM

JAKE CORDOVA, Interim Chief Information Officer, Innovation and Technology Department

SUBJECT

Agreements with Toshiba International Corporation for Uninterruptible Power System Maintenance Services

RECOMMENDATION(S)

1. Approve Service **Agreement No. 23-240**, including non-standard terms, with Toshiba International Corporation, in the amount of \$39,500, for Uninterruptible Power System maintenance at Miro Way in Rialto, for the period of April 1, 2023, through March 31, 2028.
2. Approve Service **Agreement No. 23-241**, including non-standard terms, with Toshiba International Corporation, in the amount of \$82,800, for Uninterruptible Power System maintenance at Gilbert Street in San Bernardino, for the period of April 1, 2023, through March 31, 2028.
3. Approve Service **Agreement No. 23-242**, including non-standard terms, with Toshiba International Corporation, in the amount of \$39,500, for Uninterruptible Power System maintenance at Rialto Avenue in San Bernardino, for the period of April 1, 2023, through March 31, 2028.

(Presenter: Jake Cordova, Interim 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. The five-year cost of maintenance for the Uninterruptible Power System (UPS) is \$161,800. Sufficient appropriation is included in the ITD Computer Operations 2022-23 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

ITD's Computer Operations division provides operation and maintenance of information systems for the County. ITD utilizes Toshiba UPS for the protection of the sensitive computer equipment located in the Data Centers located at Miro Way in Rialto, Gilbert Street in San Bernardino and Rialto Avenue in San Bernardino. These environments require constant uptime, which means power to these locations cannot be interrupted. Preventative maintenance needs to be completed on these UPSs by factory certified technicians to provide the maximum level of protection for the computer equipment. By contracting directly with Toshiba International

**Agreements with Toshiba International Corporation for Uninterruptible
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March 28, 2023**

Corporation (Toshiba), the County will receive the best technical support available 24 hours per day, 7 days per week and 365 days per year to correct any issues that may impact the daily operation of the UPS environment.

The Toshiba Service Agreement is Toshiba's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. Toshiba and the County negotiated these terms in 2013. 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 Agreements, including non-standard terms, to assure the availability of parts, software, and factory certified technicians to ensure the Data Center emergency power is maintained at peak efficiency.

PROCUREMENT

Toshiba International is the sole source 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.

**Agreements with Toshiba International Corporation for Uninterruptible
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REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on March 9, 2023; Purchasing (Tevan Stremel, Buyer III, 387-2098) on March 9, 2023; Risk Management (Victor Tordesillas, Director, 386-8623) on March 9, 2023; Finance (Ivan Ramirez, Administrative Analyst III, 387-4020) on March 10, 2023; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on March 13, 2023.

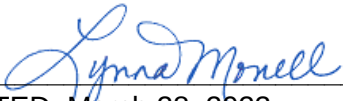
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: March 28, 2023



cc: ISD- Johnson w/agree
Contractor- C/O ISD w/agree
File- w/agree
LA 03/31/2023