

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

May 23, 2023

FROM

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

SUBJECT

Participation in the California County Information Service Directors Association Enterprise Agreement for Microsoft Corporation Enterprise Licenses

RECOMMENDATION(S)

1. Authorize County departments to participate in the California County Information Service Directors Association Enterprise **Agreement No. 23-454**, including non-standard terms, between Riverside County and the Microsoft Corporation, for enterprise licenses for the period of July 1, 2023, through June 30, 2026.
2. Authorize the Purchasing Agent to sign forms as required by Microsoft Corporation, for enrollment in the California County Information Service Directors Association Enterprise Agreement, subject to review by County Counsel.

(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.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost). Participating in the California County Information Service Directors Association (CCISDA) Enterprise Agreement (EA) with Riverside County allows the County to purchase Microsoft Corporation (Microsoft) enterprise licenses at a reduced cost for government entities. Final costs are obtained via a competitive process with resellers known as Licensing Solution Providers (LSP). County departments are required to ensure there is adequate appropriation within their respective annual departmental budgets for the cost of the Microsoft enterprise licenses during the three-year term.

BACKGROUND INFORMATION

The County employs numerous computer systems that rely on Microsoft operating systems and related software products such as Microsoft 365, SharePoint, and Active Directory. Participation in the CCISDA EA allows County departments to obtain quotes for Microsoft enterprise licensing at a reduced cost and enroll using a LSP.

On June 9, 2020 (Item No. 29), the Board of Supervisors (Board) authorized County departments to participate in the approved indefinite term CCISDA EA No. 8084445 for the period of July 1, 2020, through June 30, 2023.

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The current CCISDA EA includes terms that differ from the standard County contract and omits certain standard terms. The CCISDA EA is Riverside County's agreement with Microsoft, which has terms which are pre-established and non-negotiable. The non-standard and missing terms include the following:

1. The County is required to indemnify Microsoft against any third party claim that County data or non-Microsoft software hosted in an online service by Microsoft on the County's behalf, misappropriates a trade secret or directly infringes a patent, copyright, trademark or other proprietary right of a third party; or the County's use of any Microsoft product or fix violates the law or damages a third party.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify Microsoft, 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 Microsoft without such limitations and the County would be responsible to defend and reimburse Microsoft for costs, expenses, and damages, which could exceed the total amount paid by the County under the CCISDA EA.
2. The CCISDA EA does not require Microsoft 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 Microsoft 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 CCISDA EA.
3. Microsoft limits its maximum liability under the CCISDA EA to direct damages finally awarded in an amount not-to-exceed the amount the County was required to pay for the applicable products during the term of the Agreement, subject to a limit of 12 months before the incident giving rise to a claim related to online services \$5,000 for free products. The limits exclude defense obligations and violation of the other party's intellectual property rights.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the total amount paid by the County under the CCISDA EA leaving the County financially liable for the excess.

The CCISDA EA allows County departments the ability to increase the number of Microsoft enterprise licenses based on their actual needs. Depending on the type of license, the licenses can be added and paid up-front at the time of deployment or added through the annual "true-up" process, which is paid at the end of the annual period after licenses are reconciled between Microsoft and the Innovation and Technology Department (ITD). Departments are required to ensure there is adequate appropriation within their respective annual departmental budgets for additional Microsoft enterprise license purchases throughout the three-year period. ITD recommends authorizing County departments to participate in the CCISDA EA, which includes the non-standard terms, for an additional three-year term, of July 1, 2023, through June 30, 2026, or until terminated, whichever is earlier to continue to receive reduced cost enterprise pricing levels for Microsoft enterprise licenses.

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PROCUREMENT

The CCISDA EA negotiated between Microsoft and Riverside County was established in 2019 using a competitive Request for Proposal (RFP) process that adheres to County guidelines and is available to all public entities. The EA allows for lower enterprise pricing levels for Microsoft products through approved LSPs selected through the CCISDA RFP process. The Purchasing Department supports the use of the CCISDA EA as competitive justification. County departments utilizing the EA are required to obtain competitive bids from a minimum of three of the ten LSPs and to select and complete the authorized enrollment form with the LSP with the lowest cost. The ten LSPs are as follows:

- CDW Government LLC
- Crayon Software Experts LLC
- Dell Marketing LP
- GovConnection Inc.
- Insight Public Sector Inc.
- PCMG Inc.
- SHI International Corp.
- SoftChoice Corporation
- SoftwareOne Inc.
- Zones LLC.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on April 24, 2023; Purchasing (Tevan Stremel, Buyer III, 387-2098) on April 25, 2023; Risk Management (Victor Tordesillas, Director, 386-8623) on April 26, 2023; Finance (Ivan Ramirez, Administrative Analyst, 387-4020) on May 2, 2023; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on May 6, 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: Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.
Absent: Col. Paul Cook (Ret.)

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: May 23, 2023



cc: IT - Radimaker w/agree
Contractor - C/O IT w/agree
File - w/agree
CCM 05/30/2023