

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

November 19, 2024

FROM

LYNN FYHRLUND, Chief Information Officer, Innovation and Technology Department

SUBJECT

Non-Financial End User License Agreement with Schneider Electric IT Corporation for Building Management Software

RECOMMENDATION(S)

Approve non-financial End User License **Agreement No. 24-1142**, including non-standard terms, with Schneider Electric IT Corporation for building management software beginning on the date of acceptance and continuing until terminated by either party.

(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 End User License Agreement (EULA) with Schneider Electric IT Corporation (Schneider) is non-financial in nature and does not commit the County to make any purchases. If future purchases are made under the EULA, the Innovation and Technology Department (ITD) will adhere to County purchasing policies and return to the Board of Supervisors (Board) for approval, if necessary.

BACKGROUND INFORMATION

ITD operates and maintains two separate data centers utilized by County departments. These data centers house sensitive infrastructures, including critical communication equipment, that are susceptible to external environmental conditions.

Schneider building management software has been utilized by ITD for close to 10 years. This software integrates with other Schneider products within ITD's data centers and monitors conditions within the data centers such as emergency power supply, temperature, humidity, and cooling equipment. Schneider has now released an updated version of this software, which requires approval of the EULA.

The EULA is Schneider's standard commercial contract which contains terms that differ from the standard County contract and omit certain County standard contract terms. While the parties negotiated certain contract terms to County standards, Schneider would not agree to all County standard terms. The non-standard and missing terms include the following:

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1. Schneider may assign the EULA without notice to the County and without the County's approval.
 - (c) The County standard contract requires that the County must approve any assignment of the contract.
 - (d) Potential Impact: Schneider could assign the EULA 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. Should this occur, the County could be out of compliance with the law until it becomes aware of the assignment and terminates the EULA.
2. The EULA does not require Schneider to indemnify the County, as required by County Policies 11-05 and 11-07, including for intellectual property infringement claims.
 - (c) 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.
 - (d) Potential Impact: Schneider is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from Schneider'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 Schneider's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total EULA amount.
3. The EULA does not require Schneider to meet the County's insurance standards as required pursuant to County Policies, 11-05, 11-07 and 11-07SP.
 - (c) County policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and as set forth in County policy and in the County standard contract.
 - (d) Potential Impact: The County has no assurance that Schneider will be financially responsible for claims that may arise under the EULA, which could result in expenses to the County that exceed the total EULA amount.
4. Schneider's maximum liability to the County is limited to the total amount paid by the County for the software that caused the liability.
 - (c) The County standard contract does not include a limitation of liability.
 - (d) Potential Impact: Claims could exceed the liability cap and the EULA amount leaving the County financially liable for the excess.

ITD recommends approval of the EULA with Schneider, including non-standard terms, to allow ITD to secure the building management software needed to keep the IT infrastructure and equipment located in the County's data centers secured and maintained.

PROCUREMENT

The Purchasing Department supports the non-competitive procurement of the EULA with Schneider due to the high level of integration of their products within the data center. ITD has been utilizing Schneider's building management software for over 10 years, which interfaces with other Schneider products at our data centers. The EULA, including any non-standard terms, will be used to accompany future purchases to be approved, as necessary, in

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accordance with County Policy 11-04 Procurement of Goods, Supplies, Equipment and Services.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on October 17, 2024; Purchasing (Monica Centeno, Buyer II, 386-8046) on October 17, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst II, 386-9008) on October 9, 2024; Finance (Iliana Rodriguez, Administrative Analyst, 387-4205) on October 30, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on November 1, 2024.

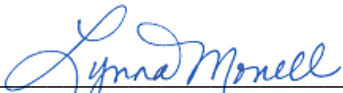
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: November 19, 2024



cc: IT - Thomas w/agree
 Contractor - c/o IT w/agree
 File - w/agree
CCM 11/27/2024