

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

April 23, 2024

FROM

CHRIS WILHITE, Assessor-Recorder-County Clerk

SUBJECT

Amendment to Non-Financial Agreement with Ruckus Wireless, Inc. for Hardware Support Services

RECOMMENDATION(S)

Approve **Amendment No. 1** to non-financial General Terms and Conditions for Support and Services **Agreement No. 21-419** with Ruckus Wireless, Inc., including non-standard terms, for hardware support services, extending the term by three years, for a total agreement term of May 18, 2021 through May 17, 2027.

(Presenter: Chris Wilhite, Assessor-Recorder-County Clerk, 382-3208)

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 additional Discretionary General Funding (Net County Cost). General Terms and Conditions for Support and Services Agreement No. 21-419 (Agreement) is non-financial in nature and does not commit the County to make any purchases. When future purchases are made under this Agreement, County purchasing policies will be adhere to and the Assessor-Recorder-County Clerk Department (ARC) will return to the Board of Supervisors (Board) for approval if necessary.

BACKGROUND INFORMATION

The Assessor's Office is the main data source for countless internal and external public agencies, property owners, and business entities for public property records. A network is necessary to house this robust amount of data. Ruckus switches act as the primary connection point to the ARC and County networks, which allow access to all critical business services and applications on a daily basis. Wireless Access Points extend ARC's network, allowing wireless connectivity for devices such as laptops, tablets, and mobile phones. These Access Points are centrally managed and monitored through a Wireless Controller, simplifying ARC's network infrastructure.

Support services are necessary to ensure that these switches remain fast, flexible, and secure to keep the Assessor's network running at peak performance. Support services include rapid problem resolution for issues that result from unexpected complications related to the switches, access points, and wireless controllers. In addition to troubleshooting, diagnostics, and problem resolution, support allows for access to recent patches and security updates among other related services.

**Amendment to Non-Financial Agreement with Ruckus Wireless, Inc. for
Hardware Support Services
April 23, 2024**

On June 8, 2021 (Item No. 20), the Board approved Agreement No. 21-419 with Ruckus Wireless, Inc. for a contract period of May 18, 2021, through May 17, 2024, for hardware support services for Ruckus switches located at the Hall of Records.

The Ruckus Agreement is Ruckus' standard commercial contract, which includes 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. Ruckus may assign its right to payment or the Agreement without notice to the County and without the County's approval to an affiliate or successor in interest of its assets.
 - The County must approve any assignment of the contract.
 - Potential Impact: Ruckus may assign the Agreement to a third party or business in 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.
2. The prevailing party is entitled to recover attorneys' fees and costs.
 - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: If either party institutes any legal proceedings related to the Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees, which could exceed the total Agreement amount.
3. The Agreement does not require Ruckus to indemnify the County, 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: Ruckus is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from Ruckus' 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 Ruckus' software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount.
4. The County is required to indemnify Ruckus against all claims arising from the County's actual or alleged violation of law.
 - The County standard contract does not include any indemnification or defense by the County of a Contractor.
 - Potential Impact: By agreeing to indemnify Ruckus 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 Ruckus without such limitations and the County would be responsible to defend and reimburse Ruckus for costs, expenses, and damages, which could exceed the total Agreement amount.

**Amendment to Non-Financial Agreement with Ruckus Wireless, Inc. for
Hardware Support Services
April 23, 2024**

5. The contract does not require Ruckus 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 Agreement does not include County standard insurance requirements. This means that the County has no assurance that Ruckus 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 Agreement amount.

6. Limitation of liability of Ruckus to \$1,000 or the amounts paid by the County in the six-month period preceding the event giving rise to the claim.
 - 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 Agreement is not similarly limited.

7. Venue is in Santa Clara County, California.
 - The County standard contract requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: Having a venue in Santa Clara County, California may result in additional expenses that exceed the amount of the Agreement.

ARC recommends approval of this amendment, including non-standard terms, as it will enable the ARC to receive support services, and allow the ARC to improve County government operations and operate in a fiscally-responsible and business-like manner.

PROCUREMENT

The Agreement, including non-standard terms, will be used to make future purchases to be approved as necessary, 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 procurement of goods and services with non-standard terms and conditions.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Kenneth Brown, Deputy County Counsel, 387-5455) on April 1, 2024; Risk Management (Victor Tordesillas, Director, 386-8621) on March 29, 2024; Purchasing (Alberto Cazares, Lead Buyer, 387-3376) on April 1, 2024; Finance (Penelope Change, Administrative Analyst, 387-4886) on April 2, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on April 8, 2024.

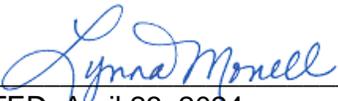
**Amendment to Non-Financial Agreement with Ruckus Wireless, Inc. for
Hardware Support Services
April 23, 2024**

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: April 23, 2024



cc: ARC - Wilhite w/agree
 Contractor - c/o ARC w/agree
 File - w/agree
CCM 04/29/2024