

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF BOARD GOVERNED COUNTY SERVICE AREAS  
AND RECORD OF ACTION**

February 6, 2024

**FROM**

**TREVOR LEJA, Assistant Executive Officer, Department of Public Works – Special Districts**

**SUBJECT**

Services Agreement with Rockwell Automation and Royal Industrial Solutions Terms and Conditions of Sale for Rockwell Automation Software, Products, and Support Services

**RECOMMENDATION(S)**

Acting as the governing body of Board Governed County Service Areas:

1. Approve the Rockwell Automation Services **Agreement No. 24-133** for Rockwell Automation software, hardware, and support services, which includes non-standard terms, in the not-to-exceed amount of \$1,500 from February 1, 2024, through January 31, 2025.
2. Approve the Royal Industrial Solutions Terms and Conditions of Sale (**County Contract No. 24-134**), the only authorized distributor of the Rockwell Automation software and products, which includes non-standard terms in connection with the sale of Rockwell Automation software, hardware, and support services.

(Presenter: David Doublet, Assistant Director, 387-7906)

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Improve County Government Operations.**

**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 Department of Public Works – Special Districts (Department), Water and Sanitation Division (Division) seeks to purchase Rockwell Automation software, products, and support services through Rockwell Automation’s solely authorized reseller, Royal Industrial Solution, for the Division’s use. The purchase amount of \$1,500 will be funded through existing revenue sources of the Board Governed County Service Areas. Adequate appropriation and revenue are included in the Division’s 2023-24 budget and will be included in future recommended budgets.

**BACKGROUND INFORMATION**

The Division provides water and sewer services to approximately 13,700 residents within various unincorporated areas of San Bernardino County. The Department utilizes Supervisory Control and Data Acquisition (SCADA), a control system to manage the Programmable Logic Controller (PLC) devices which are deployed to control and monitor the Water and Sewer Systems within multiple special districts throughout the County. The SCADA system is mission critical for operating Water and Sewer Systems as it provides monitoring and reporting on these systems, which are vital to the communities they serve.

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Rockwell Automation, under its Allen-Bradley brand, produces both the PLCs and the software necessary to program and configure them. The Department is seeking to obtain the software license and 24/7 support agreement from the vendor. This will allow the Department to maintain and quickly respond to any issues that may arise.

Rockwell Automation does not sell its products directly to customers. Instead, a purchase is made through Rockwell's authorized reseller, Royal Industrial Solution, which is the only authorized distributor to customers within San Bernardino County. This purchase requires acceptance of Rockwell's Automation's Services Agreement (Services Agreement), which contains Rockwell Automation's standard commercial terms applicable to software, hardware, and support services. The Services Agreement also requires acceptance of the Royal Industrial Solutions Terms and Conditions of Sale (TCS). The Service Agreement and TCS include terms that differ from, and omit, certain County standard contract language. The non-standard and missing terms include the following:

1. The Services Agreement requires the County to indemnify against any claim arising out of Rockwell Automation's use of County supplied/specified products and use of any County information pursuant to the Services Agreement's Statement of Work. The Services Agreement also requires the County to be responsible for indemnifying Rockwell Automation for any claims to the percentage extent directly caused by County's breach of the obligations listed in the Services Agreement. In addition, the TCS requires County to release and agree to defend, indemnify and hold Royal Industrial Solutions harmless for any claims of any nature whatsoever related to any obligation, risk, liability or responsibility which was County's under any contract or which was assumed by County towards any owner, contractor, construction manager, governmental entity, or other party involving the goods or work supplied by Royal Industrial Solutions to fulfill any contractual requirement, and if County transfers title to or leases the products sold by Royal Industrial Solutions to any third party, County shall indemnify and defend Royal Industrial Solutions and its suppliers against any such damages.
  - The County standard contract does not include any indemnification or defense by the County of a vendor.
  - Potential Impact: By agreeing to indemnify, 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 Rockwell Automation or Royal Industrial Solutions without such limitations and the County would be responsible to defend and reimburse Rockwell Automation or Royal Industrial Solutions for costs, expenses, and damages, which could exceed the total Services Agreement amount.
2. The Services Agreement and TCS do not require Rockwell Automation or Royal Industrial Solutions to indemnify the County, as required by County Policies, 11-05 and 11-07, including for intellectual property infringement claims.
  - The County standard contract indemnity provision requires a vendor 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: Vendor 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

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- infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services.
- Potential Impact: Rockwell Automation and Royal Industrial Solutions are not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from their 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 the Rockwell Automation software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total amount of purchases under the Service Agreement and TCS.
3. Payment terms stated in the TCS are Net 30 days from the invoice date with late payment interest of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.
    - County standard payment terms are Net 60 days with no interest or late payment penalties.
    - Potential Impact: County standard processing time is 60 days or more. Failing to pay net 30 days will result in a material breach of the contract, which would allow for vendor to terminate the contract and seek other legal remedies, including charging the County interest at a rate of 1.5%, which could exceed the Services Agreement amount.
  4. The TCS provides for the award of reasonable attorney's fees if Royal Industrial Solutions commences litigation to collect any amounts owed and due.
    - 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 a legal proceeding is commenced related to payment of any amount owed and due, the prevailing party will be entitled to recover reasonable attorneys' fees, which could exceed the total amount of purchases under the Services Agreement.
  5. The warranty provided in the Services Agreement is limited to 12 months for the work, 18 months for products, and 30 days for services. The Services Agreement further provides that the software is "AS IS," and disclaims all warranties of any kind, and provides a limitation on remedies at Rockwell Automation's discretion to replacement, repair, re-performance, modification, or issuance of a credit.
    - There is no warranty requirement in the County standard contract. The County expects its contractors and service providers to fully warrant the products and services they provide to the County.
    - Potential Impact: The County's use of the software, products, and support under the Services Agreement is solely at its own risk. Under California law, sellers are not required to provide any warranty.
  6. The Services Agreement limits the aggregate maximum liability to the County to the lesser of \$1,000,000 or the cost of the work (\$1,500). The limitation of liability also applies to all business interruptions, loss of profit, incidental, indirect, or consequential damages.
    - The County standard contract does not include a limitation of liability.

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- Potential Impact: Claims could exceed the liability cap and the contract amounts, leaving the County financially liable for the excess.
7. The TCS requires that any claims brought against Royal Industrial Solutions shall be made in writing with 30 days after the date of sale or occurrence giving rise to the claim, whichever is later, otherwise such claims are waived, and any action based upon such claim must be commenced and prosecuted within two years after the cause of action accrued.
    - The County standard contract does not include a limitation on the time to bring action.
    - Potential Impact: Limiting the County's ability to bring suit amounts to a waiver of the Statute of Limitations for claims and shortens the period of time in which the County may provide notice of claim and/or file a lawsuit under the contract.
  8. There is no termination for convenience of the Services Agreement without penalty of a termination fee equal to 25% of the remaining agreement value and termination request is invalid if the remaining term of services is less than 2 months.
    - The County standard contract gives the County the right to terminate the contract, for any reason, with a 30-day written notice of termination without any obligation other than to pay amounts for services rendered and expenses reasonably incurred prior to the effective date of termination.
    - Potential Impact: The payment obligations are non-refundable and non-cancellable without potential penalty. The County can only terminate without potential termination fee once the Services Agreement expired, which could result in payment liability where no funds are available due to a lack of allocation or loss of funding.
  9. The Agreements do not require Rockwell Automation or Royal Industrial Solutions to meet the County's insurance standards as required pursuant to County Policies, 11-05, 11-07 and 11-07SP.
    - County policy requires vendors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and as set forth County policy and in the County standard contract.
    - Potential Impact: The County has no assurance that Rockwell Automation or Royal Industrial Solutions will be financially responsible for claims that may arise under the Agreements, which could result in expenses to the County that exceed the total amount of the Services Agreement.

The Department recommends Board approval of the Services Agreement and TCS, including the non-standard terms, in order to acquire software and services for continued utilization by the Department to help meet the County's goals and objectives of monitoring and evaluating operations and implementing strategies to continually improve efficiency, effectiveness and monitoring and reporting on these vital systems.

**PROCUREMENT**

County Policy 11-04, Procurement of Goods and Supplies, Equipment and Services requires the department to seek Board approval for non-competitive purchases of equipment and services. Additionally, County Policy 11-05 requires departments to obtain approval from the Board for the procurement of goods and services with non-standard terms and conditions. Purchasing supports the procurement of this technology as sole source.

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Solutions Terms and Conditions of Sale for Rockwell Automation  
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**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Aaron Gest, Deputy County Counsel, 387-5455) on January 30, 2024; Risk Management (Greg Ustaszewski, Staff Analyst II, 386-8623) on January 9, 2024; Purchasing (Jason Cloninger, Lead Buyer, 387-8258) on January 24, 2024; Finance (Elias Duenas, Administrative Analyst, 387-4052) on January 16, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on January 22, 2024.

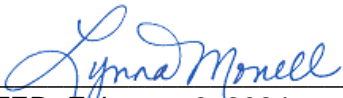
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Record of Action of the Board of Supervisors  
Board Governed County Service Areas

**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: February 6, 2024



cc: BGCSA - Vogel w/agrees  
Contractor - c/o BGCSA w/agree  
File - w/agree  
CCM 02/13/2024