

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

July 28, 2020

**FROM**

**LARRY AINSWORTH, Chief Information Officer, Information Services Department**

**SUBJECT**

Agreement with Cisco Systems, Inc. for Software and Video Conferencing Services

**RECOMMENDATION(S)**

1. Approve **End User License Agreement No. 20-612** with Cisco Systems, Inc., for the licensing of Cisco software for the period of July 28, 2020, through July 27, 2025.
2. Approve **Universal Cloud Agreement No. 20-613** with Cisco Systems, Inc. for Cisco services for the period of July 28, 2020 through July 27, 2025.
3. Approve the **Letter of Agreement No. 20-614** with Cisco Systems, Inc. as Amendment Number 1 to the End User License Agreement and the Universal Cloud Agreement for the period of July 28, 2020 through July 27, 2025.

(Presenter: Jake Cordova, Information Services Division Chief, 388-0503)

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

**Operate in a Fiscally-Responsible and Business-Like Manner.**

**FINANCIAL IMPACT**

Approval of the End User License Agreement (EULA), Universal Cloud Agreement (UCA) and Letter of Agreement will not result in the use of Discretionary General Funding (Net County Cost). Sufficient appropriation for Cisco Systems, Inc. (Cisco) software purchased through authorized resellers is included in the Information Services Department (ISD) Computer Operations 2020-21 budget and will be included in future recommended budgets. Operating costs are recovered via service rates approved annually by the Board of Supervisors.

**BACKGROUND INFORMATION**

ISD utilizes various Cisco software products for management of the server environment and video conferencing. The EULA and UCA are Cisco's standard commercial agreements, which contain terms that differ from the standard County contract. Cisco has updated its EULA and UCA and ISD negotiated with Cisco to amend non-standard terms in the updated EULA and UCA and enter into a Letter Agreement stipulating those amended terms for a period of five years. The non-standard terms in the EULA and UCA that were not amended and stipulated in the Letter Agreement include the following:

1. Cisco may assign both the EULA and the UCA without notice to the County and without the County's approval.
  - The County must approve any assignment of the contract.

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- Potential Impact: Cisco may assign the contract to a 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.
2. Cisco has the right to annually audit County's use of the software to ensure compliance with the terms of the EULA during the term and for three years after expiration or termination. If the audit discloses any underpayment of license fees, the County will pay the fees plus the reasonable costs of the audit.
    - The County standard contract does not permit contractors to audit the County's compliance.
    - Potential Impact: If an audit discloses that the County's use of the software exceed the number of licenses purchased, Cisco may demand payment of additional fees and reimbursement of audit costs, which would exceed the cost of the contract.
  3. Both the EULA and the UCA place a limit on Cisco's liability at an aggregate amount of the total fees attributable to the twelve month period before the initial claim and paid or payable to the County to any approved source under an applicable order. The UCA places a limit on Cisco's liability to the County.
    - 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.
  4. Cisco's Waiver of Subrogation against the County is limited to liabilities that fall within Cisco's indemnity obligations under the agreement.
    - The Waiver of Subrogation against the County is unconditional.
    - Potential Impact: Cisco may subrogate claims against the County to its insurers unless the claim arises under Cisco's indemnity obligations.
  5. There is no termination for convenience.
    - The County standard contract gives the County the right to terminate the Contract, for any reason, with a thirty (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: County can only terminate the contract during the term of an uncured breach by Cisco. Any attempted termination by County without cause would result in payment liability for the full contract amount, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.

ISD recommends approval of the EULA, UCA and Letter of Agreement, including the non-standard terms which are typical in the IT industry, to allow the County to continue use of current Cisco software as well as purchase additional software, such as network security software, for a five-year period to ensure security of critical data on the County network.

**PROCUREMENT**

The terms in the EULA, UCA and Letter of Agreement will be used to accompany future purchase orders issued to authorized resellers, to be approved, as necessary, per County Policy 11-04.

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**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5487) on July 1, 2020; Purchasing (Jessica Barajas, Lead Buyer, 388-5546) on July 1, 2020; Finance (Joon Cho, Administrative Analyst, 387-5402) on July 8, 2020; and County Finance and Administration (Kelly Welty, Deputy Executive Officer, 387-5423) on July 8, 2020.

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Record of Action of the Board of Supervisors  
County of San Bernardino

**APPROVED (CONSENT CALENDAR)**

Moved: Josie Gonzales    Seconded: Robert A. Lovingood  
Ayes: Robert A. Lovingood, Janice Rutherford, Dawn Rowe, Curt Hagman, Josie Gonzales

Lynna Monell, CLERK OF THE BOARD

BY   
DATED: July 28, 2020



cc:    ISD- Mancebo w/agree  
      Contractor- C/O ISD w/agree  
      File- w/agree  
la     07/30/2020