

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

October 27, 2020

FROM

CASONYA THOMAS, Assistant Executive Officer, Human Services

SUBJECT

Amendment to Agreement with EccoVia, Inc. for Homeless Management Information System Software

RECOMMENDATION(S)

Approve **Amendment No. 2 to Agreement No. 20-1003** (440001328) with EccoVia, Inc. for Homeless Management Information System software licensing, maintenance, and support services, increasing the contract amount by \$446,712 from \$199,602.32 to \$646,314.32, and extending the termination date from October 31, 2020 to October 31, 2022.

(Presenter: Tom Hernandez, Chief of Homeless Services, 501-0610)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Provide for the Safety, Health and Social Service Needs of County Residents.

Pursue County Goals and Objectives by Working with Other Agencies.

FINANCIAL IMPACT

This item does not impact Discretionary General Funding (Net County Cost). This amendment will be funded by grant monies received from the United States Department of Housing and Urban Development (HUD) for the Homeless Management Information System (HMIS) and funding from the Mental Health Services Act. Adequate appropriation and revenue have been included in the Office of Homeless Services (OHS) 2020-21 budget, and will be included in future recommended budgets.

BACKGROUND INFORMATION

The Purchasing Agent executed Agreement No. 400013287 and Amendment No. 1 to the Agreement with EccoVia, Inc. (EccoVia) to provide HMIS software licensing, maintenance, and support services for the San Bernardino County Continuum of Care (CoC), for the period of November 1, 2019 through October 31, 2020, for a total contract amount of \$199,602.32. HMIS is the information system designated by the San Bernardino County CoC to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at risk of homelessness. In its role as the administrative agent on behalf of the San Bernardino County CoC, OHS is responsible for complying with HUD's data collection, management, and reporting requirements. This amendment will allow OHS to continue to receive the necessary HMIS services provided by EccoVia.

HUD utilizes HMIS data to evaluate the success of homeless agencies and mandates that all homeless agencies that receive funding from HUD utilize the HMIS. HUD encourages all homeless service providers to utilize the HMIS as a tool to unite homeless assistance providers within a community and create a more coordinated and effective housing and service delivery system. The reliability and quality of HMIS data is important as HUD and other planners and

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policymakers at the federal, state, and local levels use aggregate HMIS data to obtain better information about the extent and nature of homelessness over time.

OHS has operated the web-enabled database system on behalf of the San Bernardino County CoC since 2013. Utilization of the HMIS is a requirement for agencies/entities to receive funding from HUD for the CoC Homeless Assistance program and the Emergency Solutions Grant, as well as a requirement for State grant programs, such as the Homeless Emergency Aid Program and the Homeless Housing, Assistance and Prevention Program.

The EccoVia application is configured specifically to collect specific data. EccoVia configures and tailors its software platform to meet the needs of a range of health and human service agencies, from chronic disease management foundations to city, county and state governments. The agreement with EccoVia provides a coordinated and effective housing and delivery system throughout San Bernardino County.

For work product developed by EccoVia, the EccoVia ClientTrack Software License & Software as a Service (SaaS) Subscription Agreement is EccoVia's standard commercial agreement, 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. The SaaS Subscription Agreement is governed by California law. Any dispute and interpretation of the terms governing the Services and Work Product provided under this SaaS Subscription Agreement will be determined by the application of California law.
 - Potential Impact: This creates a conflict with the Master Services Agreement, as discussed below, which is governed by Utah law and requires binding arbitration for dispute resolution.
2. The term of the SaaS Subscription Agreement is auto-renewing.
 - County Policy 11-06SP does not permit indefinite term or automatically renewing contracts unless approved by the Board.
 - Potential Impact: There is no end term to the contract and the County is indefinitely bound to the terms and conditions of the contract until it provides notice of non-renewal in compliance with the requirements for notice of non-renewal.
3. The SaaS Subscription Agreement does not permit 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 for an uncured breach by EccoVia or by providing notice of non-renewal 30 days prior to the expiration of the then-current term.

The EccoVia Master Services Agreement (MSA) is EccoVia's standard commercial agreement, 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. The MSA is governed by Utah law.
 - The County standard contract requires California governing law.
 - Potential Impact: The MSA will be interpreted under Utah law. Any questions, issues or claims arising under this contract will require the County to hire outside counsel

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competent to advise on Utah law, which may result in fees that exceed the total contract amount.

2. All disputes arising under the MSA must be settled by binding arbitration conducted in Salt Lake County, Utah.
 - The County standard contract does not require arbitration, and requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: The contract requires binding arbitration for all disputes between the parties. Disputes that might otherwise be settled in small claims court would incur arbitration costs that would exceed the costs of a small claims action. Arbitration decisions are not appealable. In addition, conducting arbitration in Salt Lake County, Utah may result in additional expenses that exceed the amount of the contract.
3. EccoVia may assign the contract without notice to the County and without the County's approval.
 - The County standard contract provides that the County must approve any assignment of the contract.
 - Potential Impact: EccoVia may assign the contract 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.
4. The MSA does not address 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: There is no provision in the contract addressing each party's responsibility for paying attorneys' fees. County Counsel cannot advise on, whether and to what extent, Utah law may affect a party's requirement to pay the prevailing party's attorneys' fees and costs in a legal action where no specific provision is provided in the contract.
5. The MSA does not require EccoVia to meet the County's insurance standards.
 - The County standard contract requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.
 - Potential Impact: The contract does not include County standard insurance requirements. This means that the County has no assurance that EccoVia 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 contract amount.
6. The term of the MSA is auto-renewing.
 - County Policy 11-06SP does not permit indefinite term or automatically renewing contracts unless approved by the Board.
 - Potential Impact: There is no end term to the contract and the County is indefinitely bound to the terms and conditions of the contract until it provides notice of non-renewal in compliance with the requirements for notice of non-renewal.
7. The MSA does not permit termination for convenience while any Professional Service Order is in effect.
 - 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.

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- Potential Impact: County can only terminate the MSA once all Professional Service Orders are expired or terminated, during the term for an uncured breach by EccoVia or by providing notice of non-renewal 30 days prior to the expiration of the then-current term.

Due to new funding being made available for homeless assistance programs and the requirements that homeless service providers utilize their local CoC HMIS in order to receive the funding, there has been an influx of new HMIS users thus requiring OHS to purchase additional licenses. OHS is anticipating more new users with funding being made available due to the COVID-19 pandemic. The proposed amendment will allow OHS to continue to provide services for the mandated HMIS.

PROCUREMENT

In 2013, as a result of a competitive process, a purchase order was issued with EccoVia (formerly known as ClientTrack, Inc.) for the purchase of software licensing, maintenance, and support services. On October 18, 2016 (Item No. 19), the Board of Supervisors approved the non-competitive Contract No. 16-811 with Eccovia Solutions, Inc., in the amount of \$378,829, for the period of November 1, 2016 through October 31, 2019.

Per County Policy 11-05, the Purchasing Agent may approve competitive and non-competitive purchase of services where the annual aggregate cost, per scope of services, per vendor, per agency, does not exceed \$200,000 during a single annual period. The existing Agreement No. 400013287 was executed by Purchasing on October 11, 2019, in the amount of \$136,858.80, to allow OHS to continue receiving necessary uninterrupted HMIS services for an additional year, with the option to extend an additional year. Amendment No. 1 to Agreement No. 400013287 was executed by the Purchasing Agent effective May 1, 2020, to allow OHS to increase the dollar amount of the agreement by \$62,743.52 to a total contract amount of \$199,602.32, due to the increase of user licenses.

OHS was preparing to conduct a procurement to solicit quotes from qualified vendors. However, it was decided to hold off on the procurement. Continued utilization of the current software is advantageous to the San Bernardino CoC as transferring to another vendor would require a lengthy and costly transfer process which could interrupt mandated reporting requirements. Due to the number of users utilizing the system as a result of COVID-19, it would not be feasible or cost effective to bring on a new system and re-train current users in addition to training the new users. Also, utilization of HMIS is part of grant compliance for many of the HMIS users. The Purchasing Department supports the non-competitive justification for this amendment. This item is being presented at this time as this is the first available date following the required operational, fiscal, and legal reviews. OHS plans to conduct a new procurement for these services next year.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Julie J. Surber, Principal Assistant County Counsel, 387-5455) on October 16, 2020; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on October 16, 2020; Finance (Chris Lange, Administrative Analyst, 386-8393) on October 16, 2020; and County Finance and Administration (Tanya Bratton, Deputy Executive Officer, 388-0332) on October 19, 2020.

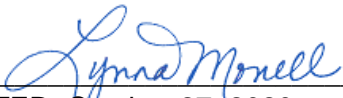
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Record of Action of the Board of Supervisors
County of San Bernardino

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: October 27, 2020



cc: HS- Hernandez w/agree
Contractor- C/O HS w/agree
File- w/agree
LA 10/29/2020