

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

March 1, 2022

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Agreements with iland Internet Solutions Corporation and Nth Generation for Cloud Platform Software

RECOMMENDATION(S)

1. Approve **Master Service Agreement No. 22-129** for Customers of Value Added Reseller with iland Internet Solutions Corporation, including non-standard terms, for cloud computing services for data backup and archiving for an indefinite contract period beginning March 1, 2022 and continuing until terminated by either party.
2. Approve a **Business Associate Agreement No. 22-130** with iland Internet Solutions Corporation.
3. Authorize Purchasing to issue a purchase order against the Quote with Nth Generation for iland cloud platform software and services in the amount of \$243,000 for the total contract period of March 1, 2022 through February 28, 2025.

(Presenter: William L. Gilbert, Director, 580-6150)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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

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

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The cost of \$243,000 is funded by State Medi-Cal, Federal Medicare, private insurances, and other departmental revenue. Funding sources may change in the future pending any legislative activity related to the repeal and/or replacement of the Affordable Care Act. Adequate appropriation and revenue have been included in the Arrowhead Regional Medical Center (ARMC) 2021-22 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

This agreement with iland Internet Solutions Corporation (iland) for cloud platform software will provide for the safety, health, and social services needs of County residents by increasing the efficiency of healthcare data collection and archive retrieval through a secure digital, off-site storage location also known as a server. The iland cloud platform software will ensure that ARMC data is safe-guarded against disasters or cyber security threats as it will replace an outdated magnetic tape technology data collection and archive retrieval system with more secure, digital technology. ARMC's data will be digitally transferred over a secure Internet connection to iland's cloud server. Moving to the cloud system will also save cost on magnetic tapes, tape library drives and maintenance/support.

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Nth Generation is a third party reseller for the software manufactured by iland. In order to utilize the iland software purchased through Nth Generation, San Bernardino County (County) must enter into a Master Agreement and Business Associate Agreement (BAA) directly with iland. The County enters into BAAs with vendors that will have access to patient health information (PHI). Furthermore, Board approval is needed for the funding to pay for the quote from Nth Generation through Recommendation No. 3, because the quote cost exceeds the Purchasing Agent's statutory authority.

The iland Master Agreement is iland's standard commercial contract, as negotiated between the parties, 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 County is required to defend, indemnify, and hold iland harmless from any and all claims (including claims by governmental entities seeking to impose penal sanctions) related to County content and by third parties relating to County's use of the iland networks and services.
 - The County standard contract does not include any indemnification or defense by the County of a Contractor.
 - Potential Impact: By agreeing to indemnify iland, 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 iland without such limitations and the County would be responsible to defend and reimburse iland for costs, expenses, and damages, which could exceed the total contract amount.
2. The contract does not include certain standard County insurance requirements as required by County Policy 11-07, including severability of interests, acceptability of insurance carrier deductibles, and self-insured retention.
 - 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: iland could make changes to its insurance program that are inconsistent with the County's requirements.
3. Except for iland's gross negligence or willful misconduct, or indemnity obligations, iland's total aggregate liability is limited to the least of (a) the amounts paid by Nth Generation to iland under the applicable order, (b) the aggregate fees payable by Nth Generation to iland over the term of the applicable order, and (c) the aggregate fees payable by Nth Generation to iland during the initial year of the term of the applicable order. In addition, iland's total aggregate liability arising under or relating to its indemnity obligations is limited to the amounts paid by Nth Generation to iland for orders issued under the Agreement. Finally, iland will have no liability to the County for loss of or damage to County information, data, or software.
 - 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 coverage is entirely dependent on Nth Generation's timely and accurate payments of funds paid by the County to iland for the services under each order.

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4. iland may temporarily suspend services to the County upon 15 days' prior notice that Nth Generation has failed to pay iland any amount owed by the County when due.
 - County standard payment terms are Net 60 days with no interest or late payment penalties.
 - Potential Impact: If Nth Generation delays or fails to pay iland amounts owed when due, iland may suspend or terminate its obligations to the County under the contract.
5. The term of the Agreement is indefinite, lasting until there are no outstanding orders for a period of 30 days, until terminated by iland, or until mutually agreed between the parties.
 - County Policy 11-06SP does not permit indefinite term or automatically renewing contracts unless approved by the Board of Supervisors.
 - Potential Impact: There is no end term to the contract and the County is indefinitely bound to the terms and conditions of the contract unless terminated by iland.
6. There is no termination for convenience.
 - 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 only way that the County can end the contract is to stop placing orders. The contract will expire 30 days after expiration of the last outstanding order.

ARMC recommends approval of the agreement to provide for the health and safety of County residents through the efficient and secure storage of patient information.

PROCUREMENT

Purchasing supports this informal competitive procurement as ARMC's Information Management (IM) Department received competitive bids from the following three companies: Golden Star Technology Inc. (Cerritos, CA), Nth Generation (San Diego, CA), and directly from iland (Houston, TX). ARMC's IM Department conducted a cost analysis and determined that going through the reseller, Nth Generation, was less expensive than purchasing directly from the manufacturer, iland.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5455) on February 7, 2022; Purchasing (Ariel Gill, Buyer III, 777-0722) on February 10, 2022; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on February 7, 2022; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-5423) on February 10, 2022.

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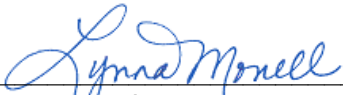
Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Dawn Rowe

Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: March 1, 2022



cc: ARMC - Gilbert w/agrees
Contractor - C/O ARMC w/agree
File - w/agree
File - Medical Center w/attach
CCM 03/3/2022