

**REPORT/RECOMMENDATION TO THE BOARD OF DIRECTORS
OF IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY
AND RECORD OF ACTION**

September 24, 2024

FROM

ROXANNE J. YOUNG, Executive Director, In-Home Supportive Services Public Authority

SUBJECT

Contract with Instructure to Provide Training Software Services

RECOMMENDATION(S)

Acting as the governing body of the In-Home Supportive Services Public Authority, approve the **Contract No. 24-945** with Instructure, including non-standard terms, to provide training software services for Care Providers, in the amount not to exceed \$58,142, for the period of September 24, 2024 through September 23, 2027.

(Presenter: Roxanne J. Young, Executive Director, 909-891-9108)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Create, Maintain and Grow Jobs and Economic Value in the County.

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

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

FINANCIAL IMPACT

This item will not impact Discretionary General Funding (Net County Cost). The total amount of this contract will not exceed \$58,142 and will be funded 50% State and 50% Federal funds. Adequate appropriation and revenue have been included in the In-Home Supportive Services Public Authority (IHSS PA) 2024-25 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

IHSS PA is responsible to provide training to IHSS PA Care Providers. The California Department of Social Services (CDSS) facilitated this training to Care Providers by providing the Canvas training software through the Career Pathway Program (Program).

The Canvas training software was an essential part of IHSS PA's progress in making it possible to continue providing training to Care Providers during the COVID-19 pandemic. The results during this period were so effective, increasing the number of trainings and outreach capability, that it became a standard process for IHSS PA to utilize this system. The training software is instrumental with tracking student attendance, recording progress, and streaming classroom material while maintaining communication with students.

By using the Canvas training software, IHSS PA was able to more effectively service clients throughout the State and the County. Earlier this year, however, the CDSS informed IHSS PA that the Program would be terminated by the end of 2024. In anticipation of the termination of

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the services, IHSS PA conducted a procurement for new training software and selected Instructure.

On September 16, 2024, the CDSS informed IHSS PA that they would be ending the Program early, effective September 17, 2024.

The contract is Instructure's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. Due to the time constraints, the parties did not attempt to negotiate the terms. The non-standard and missing terms include the following:

1. Instructure reserves the right to charge the County additional fees (payable within 30 days) if the usage of the service, in the aggregate, exceeds the typical use of Instructure's user base.
 - The County standard contract has a fixed price for a product or service and does not allow for increases without County approval.
 - Potential Impact: If the use of the software exceeds Instructure's typical use the County may be responsible for additional fees beyond the amount stated in the contract.
2. Governing law is Delaware.
 - The County standard contract requires California governing law.
 - Potential Impact: The contract will be interpreted under Delaware law. Any questions, issues or claims arising under this contract will require the County to hire outside counsel competent to advise on Delaware law, which may result in fees that exceed the total contract amount.
3. Instructure provides the use of the service "AS IS" and disclaims all warranties of any kind, including the functionality of any third-party service used with Instructure services, outcomes from use of the service, that the service will be uninterrupted or error-free, and the validity, fairness or quality of any content provided by Instructure.
 - County Policy 11-05 requires a contractor to fully warrant its services and products.
 - Potential Impact: The County's use of the services and/or products is solely at its own risk. County Counsel cannot advise on whether and to what extent Delaware law may limit or expand the disclaimers of warranty.
4. Instructure's maximum liability to the County is limited to the amount received from the County as a result of its personal use of the service in the prior 12 months.
 - 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. County Counsel cannot advise on whether and to what extent Delaware law may limit or expand the exclusion of limitations on liability.
5. Instructure may assign the contract without notice to the County and without the County's approval.
 - The County standard contract requires that the County must approve any assignment of the contract.

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- Potential Impact: Instructure could 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. Should this occur, the County could be out of compliance with the law until it becomes aware of the assignment and terminates the contract. County Counsel cannot advise on whether and to what extent Delaware law may permit or restrict a party's right to assign without an express provision in the contract.
6. Payment terms are 30 days after receipt of an invoice.
 - The County standard payment terms are Net 60 days.
 - Potential Impact: County standard processing time is 60 days or more. Failing to pay within 30 days may result in a material breach of the contract, which could allow Instructure to terminate the contract and seek other legal remedies which could exceed the contract amount.
 7. The County is prohibited from disclosing any "Confidential Information" as defined in the contract unless legally required and the County notifies Instructure in writing prior to disclosing the information.
 - The County standard contract does not include this prohibition and notice requirement.
 - Potential Impact: The County will need to be aware of its obligation to notify Instructure prior to any disclosure, including in response to a Public Record Act request.
 8. The County can only cancel the remaining two years under the contract by providing Instructure written notice 60 days prior to the end of the first year and any prepaid amounts will not be refunded.
 - 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: If the County determines it no longer wants or needs the services from Instructure it will have a limited ability to cancel the services without still paying for the services.
 9. The County is agreeing to indemnify Instructure for any claims (including attorneys' fees) arising out of any claim by a third party that the County's content infringes the intellectual property rights of a third-party, or the County use violates the contract. Also, Instructure's indemnification of the County is limited to a claim by a third party that the services infringe on the intellectual property right of a third party.
 - The County standard contract does not include any indemnification or defense by the County of a contractor and requires the contractor to indemnify the County from any third-party claims.
 - Potential Impact: By agreeing to indemnify Instructure, 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 Instructure without such limitations and the County could be responsible to defend and reimburse Instructure. Further, the limited indemnification by Instructure means that if the County is sued it may be solely

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liable for the costs of defense and damages, which could exceed the total contract amount. County Counsel cannot advise on whether and to what extent Delaware law may impact these indemnification obligations.

10. Instructure may change the contract terms without notice at any time.
 - County Policy 11-06 requires that any changes to the contract be reduced to writing, executed and approved by authorized individuals for both parties.
 - Potential Impact: The County could be agreeing to new terms without review by anyone, including County Counsel, and without approval of the new terms by the Board of Directors. County Counsel cannot advise on whether and to what extent Delaware law may affect the enforceability of unilateral changes to the terms.
11. The contract does not require Instructure to meet the County's insurance standards as required pursuant to County Policies, 11-05, 11-07 and 11-07SP.
 - County Policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and as set forth in County Policy and in the County standard contract.
 - Potential Impact: The County has no assurance that Instructure will be financially responsible for claims that may arise under the contract.

Due to this expedited timeline, IHSS PA recommends approval of the contract, including non-standard terms, in order to maintain training for Care Providers and have access to sufficient training software services.

PROCUREMENT

On April 10, 2024, IHSS PA conducted an Informal Request for Quotes (RFQ) to solicit quotes from qualified vendors to provide training software services including cloud subscriptions, training courses and comprehensive support for a three-year period. Responses to the Informal RFQ were received as follows:

Agency	Proposed Cost
Blackboard Anthology	\$249,400
CareAcademy	\$81,396
Instructure	\$58,141

Based on the competitive pricing of the responses, Instructure was selected to provide training software services for IHSS PA Care Providers.

REVIEW BY OTHERS

This item has been reviewed by Human Services Contracts (Patty Steven, Contracts Manager, 388-0241) on September 18, 2024; County Counsel (Julie Surber, Principal Assistant County Counsel, 387-5455) on September 19, 2024; Information, Technology, and Support Division (Marcella Ramirez, Departmental Information Systems Administrator, 386-1997) on September 18, 2024; Purchasing (Jessica Barajas, Supervising Buyer, 387-2065) on September 18, 2024; Risk Management (Greg Ustaszewski, Staff Analyst II, 386-9008) on September 19, 2024; Finance (John Hallen, Administrative Analyst, 388-0208) on September 19, 2024; and County Finance and Administration (Cheryl Adams, Deputy Executive Officer, 388-0238) on September 19, 2024

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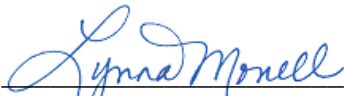
Record of Action of the Board of Directors
In-Home Supportive Services Public Authority

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Joe Baca, Jr.
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Curt Hagman, Joe Baca, Jr.
Absent: Dawn Rowe

Lynna Monell, SECRETARY

BY



DATED: September 24, 2024



cc: IHSSPA - Younger w/agree
 Contractor - c/o IHSSPA w/agree
 File - w/agree
CCM 09/30/2024