

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

April 23, 2024

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Non-Financial Agreement with the University of Washington and RAND Corporation for Patient Caseload Management Software

RECOMMENDATION(S)

Approve a non-financial Care Management Tracking System Software and Data Storage **Agreement No. 24-326**, including non-standard terms, with the University of Washington and RAND Corporation for access to and use of a cloud-based, Health Insurance Portability and Accountability Act compliant software program for prioritizing and managing patient caseloads in integrated behavioral health settings, including secondary data storage of healthcare information relating to patients and clients, for the contract period of the date of execution through June 1, 2027.

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

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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) as the Care Management Tracking System Software and Data Storage Agreement (Agreement) with University of Washington (UW) and RAND Corporation (RAND) is non-financial in nature.

BACKGROUND INFORMATION

The Agreement will allow Arrowhead Regional Medical Center (ARMC) to access and use the cloud-based, Health Insurance Portability and Accountability Act-compliant software program developed by UW, which is affiliated with the approved Revenue Subaward Agreement with RAND Corporation for work on the National Institute of Health (NIH) funded study, "Reducing Overdose and Suicide Risk in Individuals with Opioid Use Disorder and Co-occurring Disorders" (Study).

The UW software program, which is used to upload data and information for the Study, will provide a method for prioritizing and managing patient caseloads in integrated behavioral health settings and includes secondary data storage healthcare information relating to patients and clients in a combined Care Management Tracking System. The tracking system's technical specifications and instructions, including data structure and taxonomy related to the Software and Data Storage services, are the confidential intellectual property of UW. Approval of the

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Agreement will help raise the profile of the hospital with the NIH and could help ARMC become more involved in future NIH funded studies.

In March of 2021, RAND approached ARMC to discuss the possibility of having ARMC be the Study site in a grant application that RAND was applying for with the NIH to study the integration of mental health counseling into ARMC's existing program. In 2023, RAND was awarded the grant by the NIH. RAND has been working with ARMC to finalize this Agreement since June 2023.

On February 27, 2024 (Item No. 19), the Board of Supervisors approved Revenue Subaward Agreement No. 24-158 with RAND Corporation for work on the NIH funded Study, in the amount of \$111,065 for the period of February 27, 2024 through March 31, 2028.

The Agreement is the three-party contract used by RAND and UW for the program, which includes terms that differ from the standard County contract and omits certain County standard contract terms. While RAND and UW were willing to negotiate certain contract terms to County standard terms, RNA and UW would not agree to all County standard terms. The non-standard and missing terms include the following:

1. Governing law is the State of Washington.
 - The County standard contract requires California governing law.
 - Potential Impact: The Agreement will be interpreted under Washington State law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on Washington State law, which may result in fees that exceed the total Agreement amount.
2. UW may assign the Agreement without notice to the County and without the County's approval. The Agreement is silent as to whether RAND may assign the Agreement.
 - In the County standard contract the County must approve any assignment by the contractor.
 - Potential Impact: UW may assign the Agreement 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 Agreement. With respect to RAND, County Counsel cannot advise on whether and to what extent Washington state law may permit or restrict a party's right to assign without an express provision in the Agreement.
3. There is no provision in the Agreement addressing each party's responsibility for paying attorneys' fees.
 - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: County Counsel cannot advise on, whether and to what extent, Washington state 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 Agreement.
4. The County is required to indemnify UW against claims resulting from the County's possession and/or use of the services, including third party claims related to any

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disclosure of Data, PHI, or other patient-related information by the County, and any claims with respect to death or injury to any person and damage to any property caused by the County's sole negligence. The County is not required to indemnify RAND under the Agreement.

- The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify UW, 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 UW without such limitations and the County could be responsible to defend and reimburse UW for costs, expenses, and damages, which could exceed the total Agreement amount. County Counsel cannot advise on, whether and to what extent, Washington state law may limit or expand this Agreement term.
5. The Agreement does not require RAND to indemnify the County, as required by County Policies 11-05 and 11-07, including for intellectual property infringement claims. UW provides indemnity to the County.
- The County standard contract indemnity provision requires the contractor 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: Contractor 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 infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services.
 - Potential Impact: While UW provides indemnity to the County for its actions, RAND is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from RAND's 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 RAND's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount. County Counsel cannot advise on whether and to what extent Washington state law may allow the County to require RAND to defend or indemnify it absent an express provision in the Agreement.
6. The Agreement does not require either UW or RAND 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 either UW or RAND will be financially responsible for claims that may arise under the Agreement, which could result in expenses to the County that exceed the total Agreement amount.
7. There is no stated venue in the Agreement.
- County Policy 11-05 requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.

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- Potential Impact: UW is a public institution of higher education and an agency of the State of Washington with its principal campus located in Seattle, Washington. RAND is headquartered in Santa Monica, California. Having no express venue in the Agreement means that Washington state venue could be applied to disputes arising under this Agreement, which may result in additional expenses that exceed the amount of the Agreement.

ARMC recommends approval of the Agreement with RAND, including the non-standard terms, to provide for the safety, health and social service needs of county residents by implementing expanded substance abuse services to opioid use disorder patients in order to improve effectiveness of treatment services and reduce overdose and suicide ideation among patients.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on March 4, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst II, 386-9008) on April 10, 2024; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on April 1, 2024; Finance (Jenny Yang, Administrative Analyst, 387-4884) on April 2, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on April 2, 2024.

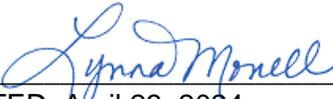
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: April 23, 2024



cc: ARMC - Gilbert w/agree
 Contractor - c/o ARMC w/agree
 File - w/agree
CCM 04/26/2024