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Contract Number

23.40

SAP Number

4400006948

## Arrowhead Regional Medical Center

Department Contract Representative	William L. Gilbert
Telephone Number	(909) 580-6150
Consultant	Toyon Associates, Inc.
Consultant Representative	Carrie Yee
Telephone Number	(925) 685-9312
Contract Term	April 20, 2023 through April 19, 2028
Original Contract Amount	NTE \$4,543,900
Amendment Amount	
Total Contract Amount	NTE \$4,543,900
Cost Center	9185104200

### MEDICARE COST REPORT PREPARATION AND CONSULTING SERVICES AGREEMENT

**WHEREAS**, the Medicare and Medicaid Programs require the preparation and submission of an annual cost report five months after the end of each fiscal year and the complexity of the annual cost reports has increased greatly over the years and for Designated Public Hospitals (DPHs), such as Arrowhead Regional Medical Center (ARMC), the actual amount of reimbursement affected by the cost reports has increased; and

**WHEREAS**, proper compilation of cost reports is important for future reimbursement increases to ARMC and to maintain compliance with federal and state reporting rules; and

**WHEREAS**, the Medi-Cal cost report is used as the basis for filing the P14 Workbook for Medicaid Disproportionate Share Hospital Funding (DSH) and Safety Net Care Pool Funding (SNCP) allocations, as well as, the AB85 Realignment redirection and cost reimbursement calculations; and

**WHEREAS**, in light of the foregoing, San Bernardino County (County) desires to retain a consultant on behalf of ARMC for the purpose of preparing the annual Medicare/Medicaid cost reports for submission to the fiscal intermediaries, the annual Medi-Cal P14 Workbook, the AB85 Realignment Redirection calculation, and providing other reimbursement consulting services (collectively, the "Services"); and

**WHEREAS**, Toyon Associates, Inc. ("Consultant" or "Toyon") has specialized credentials and expertise and has prepared hundreds of cost reports for all types and sizes of facilities including DPHs, and has prepared and reviewed many P14 workbooks and is, therefore, uniquely qualified to assist ARMC with the preparation of the Medicare/Medi-Cal cost reports and provide reimbursement consulting services; and

**WHEREAS**, based on Consultant's experience, expertise, and specialized credentials, the County desires that Consultant provide the Services to ARMC and Consultant desires to provide the Services to ARMC as set forth below;

**NOW, THEREFORE**, the County and Consultant mutually agree to the following terms and conditions:

**A. DEFINITIONS**

- A.1 CMS** – refers to the Centers for Medicare and Medicaid Services
- A.2 GPP** – refers to the Global Payment Program
- A.3 SPD** – refers to Medi-Cal Coverage for Seniors and Patients with Disabilities

**B. CONSULTANT RESPONSIBILITIES**

**B.1** Consultant shall provide consulting services to ARMC, which shall include, but are not limited to the following:

**B.1.1** Prepare ARMC's Medicare/Medi-Cal cost reports using CMS approved software. The preparation of the cost reports will be for filing purposes and will include preparation of all related supplemental forms and questionnaires as required by the Medicare/Medi-Cal programs. The filed cost report will comply with all applicable CMS regulations while protecting ARMC's appeal rights. All areas with significant reimbursement effect will be reviewed. Consideration will be given based on prior year's cost reports and previous audited cost reports to ensure consistency. (Fixed Fee)

**B.1.2** Provide Point of Service (POS) verification of Medi-Cal eligibility (to the extent data is available due to 12-month processing limit), and Medicare DSH eligibility processing. (Fixed Fee)

**B.1.3** Prepare Medicare/Medi-Cal crossover bad debt and Dual Eligibles for P14 processing. (Fixed Fee)

**B.1.4** Prepare Interns and Resident IRIS report for Medicare cost report. (Fixed Fee)

**B.1.5** Prepare Medi-Cal P14 Workbook. (Fixed Fee)

**B.1.6** Prepare AB915 Outpatient Medi-Cal report and HCAI (OSHPD) report (Fixed Fee)

**B.1.7** Prepare SPD & GPP filings (Hourly)

**B.1.8** Assist with AB85 Realignment Redirection calculation of Medi-Cal and uninsured costs and revenues. (Hourly)

**B.1.9** Assist with Medi-Cal & other State audits of P14, AB85, etc. (Hourly)

**B.1.10** Provide reimbursement consulting as requested. (Hourly)

**B.1.11** Provide Medicare Audit Appeal Service and Cost Report Reopening Services (Contingency Fee)

When requested by ARMC, Consultant will pursue Medicare cost report appeals and/or cost report reopenings on behalf of ARMC for the cost reporting periods of Fiscal Year End ("FYE") 2022 through FYE 2027. Consultant's services relating to these appeals/reopenings will include, but are not limited to, the following:

- Review the audited cost reports, Medicare Administrative Contractor (MAC, formerly Intermediary) workpapers to determine whether the issues should be appealed and/or reopened. All issues that can be reflected in a cost report or reopening may be pursued.
- Prepare and file appeal letters to the Provider Reimbursement Review Board (PRRB) to establish Medicare appeals (if not already done), to add the issue to existing appeals, and/or to transfer the issue to group appeals;
- Develop appeal strategy, perform research, and obtain documentation needed to pursue disputed issues;
- Prepare and file cost report reopening requests if appropriate;
- Prepare and file preliminary and final position papers;
- Review the MAC's preliminary and final position papers;
- If a PRRB Medicare hearing is necessary, Toyon may, at its own cost, engage an attorney to assist in handling the case and will work closely with the attorney in to prepare for the hearing. That preparation will include, but is not limited to, preparation of testimony, evidence, and hearing strategy;
- Perform all follow-up needed with the Medicare Program with respect to appeals and reopening requests;
- Review and revise settlements resulting from appeals or reopenings and any hearing decisions and provide recommendations to ARMC;
- Upon approval by the San Bernardino County Board of Supervisors or its authorized representatives, pursue unfavorable PRRB decisions to court, at Toyon's cost, if, in Toyon's opinion and concurrence by ARMC, there is sufficient likelihood of success and sufficient reimbursement value in relation to the cost of pursuing the case;
- Upon approval by the San Bernardino County Board of Supervisors or its authorized representatives, and at Toyon's own cost (including attorney's fees and court costs), pursue issues directly to court or use expedited jurisdictional review if, in Toyon's opinion and concurrence by ARMC, such action is deemed warranted.

**B.2** This Contract covers the cost reporting period ending June 30, 2023, 2024, 2025, 2026, and 2027, for all scope of services. This Contract also covers the cost reporting period ending June 30, 2022, for Medicare Appeal Services.

## **C. GENERAL CONTRACT REQUIREMENTS**

### **C.1 Recitals**

The recitals set forth above are true and correct and incorporated herein by this reference.

### **C.2 Contract Amendments**

Consultant agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Consultant and County.

### **C.3 Contract Exclusivity**

This is not an exclusive Contract. The County reserves the right to enter into a contract with other consultants for the same or similar services. The County does not guarantee or represent that the Consultant will be permitted to perform any minimum amount of work, or receive a minimum amount of compensation, under the terms of this Contract.

### **C.4 Attorney's Fees and Costs**

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

### **C.5 Background Checks for Consultant Personnel**

Consultant shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide services to the County; and (c) are not otherwise disqualified from performing the services under applicable law. If requested by the County and not in violation of applicable law, Consultant shall conduct a background check, at Consultant's sole expense, on all its personnel providing services. If requested by the County, Contractor shall provide the results of the background check of each individual to verify that the individual meets Consultant's standards for employment. Such background check shall be in the form generally used by Consultant in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Consultant personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or services, and County shall have the right, at its sole option, to refuse access to any of Consultant's personnel to any County facility.

### **C.6 Change of Address**

Consultant shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

### **C.7 Choice of Law**

This Contract shall be governed by and construed according to the laws of the State of California.

### **C.8 Compliance with County Policy**

In performing the services and while at any County facilities, Consultant personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the services, and all amendments and modifications to each of the items addressed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Consultant or Consultant personnel or may be made available to Consultant or Consultant personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Consultant shall be responsible for the promulgation and distribution of County Policies to Consultant personnel to the extent necessary and appropriate.

County shall have the right to require Consultant's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

### **C.9 Confidentiality**

Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, regulations have been promulgated governing the privacy of individually identifiable health information. The HIPAA Privacy Rule and Security Rule specify requirements with respect to contracts between a Covered Entity and its Business Associates. Consultant shall execute and comply with the attached Business Associate Agreement (Attachment C). Consultant further agrees to comply with the requirements of other federal and state laws that apply to the information collected and maintained by Consultant for services performed pursuant to this Contract.

### **C.10 Primary Point of Contact**

Consultant will designate an individual to serve as the primary point of contact for the Contract. Consultant or designee must respond to County inquiries within two (2) business days. Consultant shall not change the primary contact without written acknowledgement to the County. Consultant will also designate a back-up point of contact in the event the primary contact is not available.

**C.11 County Representative**

The ARMC Hospital Director or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the services/Scope of Work by Consultant. If this Contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract, unless otherwise delegated.

**C.12 Damage to County Property**

Consultant shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Consultant or its employees or agents. Such repairs shall be made immediately after Consultant becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Consultant fails to make timely repairs, the County may make any necessary repairs. The Consultant, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Consultant from the County, as determined at the County's sole discretion.

**C. 13 Debarment and Suspension**

Consultant certifies that neither it nor its principals or subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Consultant further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State. Consultant hereby represents and warrants that it is not and at no time has been convicted of any criminal offense related to health care nor has been debarred, excluded, or otherwise ineligible for participation in any federal or state government health care program, including Medicare and Medicaid. Further, Consultant represents and warrants that no proceedings or investigations are currently pending or to Consultant's knowledge threatened by any federal or state agency seeking to exclude Consultant from such programs or to sanction Consultant for any violation of any rule or regulation of such programs.

**C.14 Drug and Alcohol Free Workplace**

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Consultant agrees that the Consultant and the Consultant's employees, while performing service for the County, on County property, or while using County equipment:

- C.14.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- C.14.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- C.14.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Consultant or Consultant's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

Consultant shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Consultant has with the County, if the Consultant or Consultant's employees are determined by the County not to be in compliance with above.

**C.15 Duration of Terms**

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

**C.16 Employment Discrimination**

During the term of the Contract, Consultant shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Consultant shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

**C.17 Environmental Requirements**

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Consultant to use recycled paper for any printed or photocopied material created as a result of this Contract. Consultant is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the County in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Consultant must be able to annually report the County's environmentally preferable purchases. Consultant must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

**C.18 Improper Influence**

Consultant shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Consultant or officer or employee of the Consultant.

**C.19 Improper Consideration**

Consultant shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Consultant shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Consultant. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

**C.20 Informal Dispute Resolution**

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect,

they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

#### **C.21 Legality and Severability**

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

#### **C.22 Licenses, Permits and/or Certifications**

Consultant shall ensure that it has all necessary licenses, permits and/or certifications required by Federal, State, County, and municipal laws, ordinances, rules and regulations. The Consultant shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Consultant will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

#### **C.23 Material Misstatement/Misrepresentation**

If during the course of the administration of this Contract, the County determines that Consultant has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

#### **C.24 Mutual Covenants**

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

#### **C.25 Nondisclosure**

Consultant shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Consultant or an agent of Consultant or otherwise made available to Consultant or Consultant's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Consultant or an agent of Consultant in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

#### **C.26 Notice of Delays**

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

#### **C.27 Ownership of Documents**

All documents, data, products, graphics, computer programs and reports prepared by Consultant pursuant to the Contract shall be considered property of the County upon payment for services (and products, if applicable). All such items shall be delivered to County at the completion of work under the Contract, subject to the requirements of Article D--Term of the Contract. Unless otherwise directed by County, Consultant may retain copies of such items.

#### **C.28 Access to Books and Records**

Until the expiration of four years after furnishing the services provided under this Contract, Consultant will make available to the Secretary, U.S. Department of Health and Human Services, and the U.S.

Comptroller General, and their representatives, this Contract and all books, documents, and records necessary to certify the nature and extent of the costs of those services.

**C.29 Air, Water Pollution Control, Safety and Health**

Consultant shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

**C.30 Records**

Consultant shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Consultant's personnel, consultants, subcontractors, services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

**C.31 Relationship of the Parties**

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto. In the performance of this Contract, Consultant, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the San Bernardino County. Any provision of this Contract that may appear to give the County any right to direct the Consultant concerning the details of performing the services/Scope of Work, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the County concerning the end results of the performance.

**C.32 Release of Information**

No news releases, advertisements, public announcements or photographs arising out of the Contract or Consultant's relationship with County may be made or used without prior written approval of the County.

**C.33 Strict Performance**

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

**C.34 Subcontracting**

Consultant shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the services to County. At County's request, Consultant shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Consultant shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Article G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Consultant Personnel.

For any subcontractor, Consultant shall:

- 34.1 Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- 34.2 Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.



- 34.3** Include in the subcontractor's subcontract substantially similar terms as are provided in Articles B. Consultant Responsibilities and C. General Contract Requirements.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the subcontractors. Consultant agrees that its arrangements with subcontractors will not prohibit or restrict such subcontractors from entering into direct contracts with County.

**C. 35 Subpoena**

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided under this Contract is served upon Consultant or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Consultant and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Consultant for County.

**C.36 Termination for Convenience**

The County reserves the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Consultant for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Consultant shall promptly discontinue services unless the notice directs otherwise. Consultant shall deliver promptly to County and transfer title (if necessary) to all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

**C.37 Time of the Essence**

Time is of the essence in performance of this Contract and of each of its provisions.

**C.38 Venue**

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

**C.39 Conflict of Interest**

Consultant shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Consultant shall make a reasonable effort to prevent officers, employees, subcontractors, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Consultant's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

**C.40 Former County Administrative Officials**

Consultant agrees to provide, or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Consultant. The information provided includes a list of former County administrative officials who terminated County employment

within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Consultant. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

#### **C.41 Disclosure of Criminal and Civil Procedures**

County reserves the right to request the information described herein from Consultant. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Consultant also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Consultant is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Consultant will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Consultant is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Consultant will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

#### **C.42 Copyright**

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the San Bernardino County as the funding agency and Consultant as the creator of the publication. No such materials, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Consultant in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the County prior to publication.

#### **C.43 Iran Contracting Act**

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Consultant certifies that at the time the Contract is signed, the Consultant signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Consultants are cautioned that making a false certification may subject the Consultant to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

**C. 44 Errors, Omissions and/or Conflicts**

Consultant shall be responsible for the integrity of all design and research studies prepared or approved by the Consultant and should County suffer damages due to errors, omissions, and/or conflicts within such documents, the Consultant shall be responsible to County for costs of all such damages.

**C. 45 California Consumer Privacy Act**

To the extent applicable, if Contractor is a business that collects the personal information of a consumer(s) in performing Services pursuant to this Contract, Contractor must comply with the provisions of the California Consumer Privacy Act (CCPA). (Cal. Civil Code §§1798.100, et seq.). For purposes of this provision, "business," "consumer," and "personal information" shall have the same meanings as set forth at Civil Code section 1798.140. Contractor must contact the County immediately upon receipt of any request by a consumer submitted pursuant to the CCPA that requires any action on the part of the County, including but not limited to, providing a list of disclosures or deleting personal information. Contractor must not sell, market or otherwise disclose personal information of a consumer provided by the County unless specifically authorized pursuant to terms of this Contract. Contractor must immediately provide to the County any notice provided by a consumer to Contractor pursuant to Civil Code section 1798.150(b) alleging a violation of the CCPA, that involves personal information received or maintained pursuant to this Contract. Contractor must immediately notify the County if it receives a notice of violation from the California Attorney General pursuant to Civil Code section 1798.155(b).

**D. TERM OF CONTRACT**

Unless earlier terminated, this Contract is effective for services set forth in Section B.1.1 through B.1.10 from April 20, 2023 until April 19, 2028 and will remain in effect until ARMC's cost reports are accepted by the Medicare and Medi-Cal Intermediaries and the other reports are filed with DHCS or April 19, 2028, whichever is later. In no event shall this Contract for services B.1.1 through B.1.10 extend beyond June 30, 2028.

Unless earlier terminated, for the services set for in Section B.1.11, this Contract is effective until the appeals or reopenings for cost reporting periods ending June 30, 2022-2027 are resolved or concluded.

**E. COUNTY RESPONSIBILITIES**

E.1 County shall cause its employees and agents to comply with a timely manner with all reasonable requests from Consultant in connection with the preparation of ARMC's cost reports.

E.2 County understands that in preparing the cost reports, Consultant will be relying upon the accuracy of the cost, revenue, and statistical information provided by ARMC to Consultant. County further understands that Consultant will not be auditing this information, but Consultant will eliminate any costs identified as non-allowable by the facility as well as any specific items that may come to its attention during the course of its provision of services to ARMC.

E.3 ARMC shall maintain the basic data needed to complete the reports such as departmental revenue and expense information, cost finding statistics, census information, payroll hours and dollars summarized by classification, intern and resident rotation schedules, etc. For P14 and AB85 preparation, ARMC understands that Consultant will request a complete patient database by account with payer plans, Medi-Cal aid code if available, charges and payments. A complete data request will be provided.

**F. FISCAL PROVISIONS**

F.1 The maximum amount of payments under this Contract shall not exceed \$4,543,900, which may be federally funded, and shall be subject to availability of other funds to the County. The consideration to be paid to Consultant, as provided herein, shall be in full payment for all

Consultant's services and expenses incurred in the performance hereof, including travel and per diem.

Consultant bears the risk that it may not be able to generate its anticipated (or any) profit in completing its performance of all required items of work for the specified level of compensation. In no event shall Consultant be entitled to receive compensation for any item of work required of Consultant under the terms of the Contract, which item of work is not performed by Consultant (including Consultant's agents and approved subcontractors).

- F.2** The fees for the services in Sections B.1.1 through B.1.10 are either fixed fee or fee for service at hourly rates as identified in those sections. The fees for the fixed fee services are set forth in Attachment A. The hourly rates for the services based on a fee for service are set forth on Attachment B. Fixed fee services will be billed as follows: 40% at the start of the engagement and the remaining 60% after delivery of the report package for filing. Hourly services will be billed monthly and will have annual increases as specified in Attachment A.
- F.3** For Medicare Audit Appeal Services and Cost Report Reopening Services, as described in Section B.1.11 (collectively, "Appeal Services") performed by Consultant, payment for the services will be calculated as 20% of the additional Medicare reimbursement realized by ARMC as a result of Consultant's work. The additional reimbursement will either be a payment to ARMC by the MAC or a reduction of an outstanding liability. Payment is due to Consultant within 60 days of ARMC's receipt of invoice from Consultant following ARMC's receipt of reimbursement from the MAC or official notification from the MAC that ARMC's liability has been decreased. No payment, fees, or expenses are due to Consultant unless additional reimbursement is realized by ARMC. The 20% payment herein described constitutes the total payment to Consultant for its Appeal Services to ARMC and is inclusive of any work performed by and costs incurred by Consultant, including, but not limited to attorney's fees, filing fees, and court costs, associated with its Appeal Services. Consultant is not entitled to any other expenses or fees, including any hourly fees set forth in any Attachments to this Contract, as it relates to its compensation for Appeal Services.
- F.4** As specified in this provision, software use fee and expenses incurred in conjunction with the services will be billed in addition to the professional fees. If Consultant uses its approved software for the services, the use fee for the cost report will be \$600. Consultant further charges a \$1,000 fee for the use of the Consultant's ABSOLUTE electronic workpaper system. If ARMC has its own software that it wishes Consultant to use, there will be no software charge.
- F.5** Consultant shall provide County itemized monthly invoices, in arrears, and in a format acceptable to the County for services performed under this Contract within twenty (20) days of the end of the previous month. The County shall make payment to Consultant within sixty (60) working days after receipt of invoice or the resolution of any billing dispute.
- F.6** Consultant shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Consultant's designated checking or other bank account. Consultant shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.
- F.7** County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Consultant or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.
- F.8** Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by County. Consultant shall not use current year funds to pay prior or future year obligations.

- F.9 Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Consultant shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Consultant agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.
- F.10 Consultant shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Consultant is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

**G. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

**G.1 Indemnification**

The Consultant agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The Consultant indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

**G.2 Additional Insured**

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

**G.3 Waiver of Subrogation Rights**

Consultant shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Consultant and Consultant's employees or agents from waiving the right of subrogation prior to a loss or claim. Consultant hereby waives all rights of subrogation against the County.

**G.4 Policies Primary and Non-Contributory**

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

**G.5 Severability of Interests**

Consultant agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Consultant and County or between County and any other insured or additional insured under the policy.

**G.6 Proof of Coverage**

Consultant shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated

or expire without thirty (30) days written notice to the Department, and Consultant shall maintain such insurance from the time Consultant commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, Consultant shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

**G.7 Acceptability of Insurance Carrier**

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

**G.8 Deductibles and Self-Insured Retention**

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

**G.9 Failure to Procure Coverage**

In the event that any policy of insurance required under this Contract does not comply with the requirements, is not procured, or is canceled and not replaced, County has the right but not the obligation or duty to cancel this Contract or obtain insurance if it deems necessary and any premiums paid by County will be promptly reimbursed by Consultant or County payments to the Consultant will be reduced to pay for County purchased insurance.

**G.10 Insurance Review**

Insurance requirements are subject to periodic review by County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Consultant agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of County.

**G.11 Consultant agrees to provide insurance set forth in accordance with the requirements herein. If Consultant uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Consultant agrees to amend, supplement or endorse the existing coverage to do so.**

Without in anyway affecting the indemnity herein provided and in addition thereto, Consultant shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

**G.11.1 Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers**

providing services on behalf of the Consultant and all risks to such persons under this contract.

If Consultant has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Consultants that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

- G.11.2** Commercial/General Liability Insurance – Consultant shall carry General Liability Insurance covering all operations performed by or on behalf of Consultant providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
- a. Premises operations and mobile equipment.
  - b. Products and completed operations.
  - c. Broad form property damage (including completed operations).
  - d. Explosion, collapse and underground hazards.
  - e. Personal injury.
  - f. Contractual liability.
  - g. \$2,000,000 general aggregate limit.

- G.11.3** Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If Consultant is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If Consultant owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- G.11.4** Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

- G.11.5** Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after contract completion.

- G.11.6** Cyber Liability Insurance - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

**H. SUCCESSORS AND ASSIGNS**

**H.1** This Contract shall be binding upon County and Consultant and their respective successors and assigns.

**H.2** Neither the performance of this Contract, nor any part thereof, nor any monies due or to become due thereunder may be assigned by Consultant without the prior written consent and approval of County.

**H.3** Death or Incapacity: If the Consultant transacts business as an individual, his/her death or incapacity shall automatically terminate this Contract as of the date of such event, and neither he/she nor his/her estate shall have any further right to perform hereunder, and County shall pay him/her or his/her estate the compensation payable under Article F, Fiscal Provisions, for any services rendered prior to such termination not heretofore paid, reduced by the amount of additional costs which will be incurred by County by reason of such termination. If there be more than one Consultant and any one of them die or become incapacitated and the others continue to render the services covered herein, County will make payment to those continuing as though there had been no such death or incapacity and County will not be obliged to take any account of the person who died or became incapacitated or to make any payments to such person or his estate. The provision shall apply in the event of progressive or simultaneous occasions of death or incapacity among any group of persons named as Consultant herein, and if death or incapacity befalls the last one of such group before this Contract is fully performed, then the rights shall be as if there had been only one Consultant.

**I. RIGHT TO MONITOR AND AUDIT**

**I.1** The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Consultant in the delivery of services provided under this Contract. Consultant shall give full cooperation, in any auditing or monitoring conducted. Consultant shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.

**I.2** All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under the Contract or until all pending County, State and Federal audits are completed, whichever is later.

**J. CORRECTION OF PERFORMANCE DEFICIENCIES**

**J.1** Failure by Consultant to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.

**J.2** In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- a. Afford Consultant thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or
- b. Discontinue reimbursement to Consultant for and during the period in which Consultant is in breach, which reimbursement shall not be entitled to later recovery; and/or
- c. Withhold funds pending duration of the breach; and/or



- d. Offset against any monies billed by Consultant but yet unpaid by County those monies disallowed pursuant to Item "b" of this paragraph; and/or
- e. Terminate this Contract immediately and be relieved of the payment of any consideration to Consultant. In the event of such termination, County may proceed with the work in any manner deemed proper by County. The cost to County shall be deducted from any sum due to Consultant under this Contract and the balance, if any, shall be paid by Consultant upon demand.

**J.3** Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provision of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either Party shall not constitute a waiver of the right to pursue other available remedies.

**K. NOTICES**

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

*Arrowhead Regional Medical Center  
400 N. Pepper Avenue  
Colton, CA 92324  
Attn: Hospital Director*

*Toyon Associates, Inc.  
1800 Sutter Street, Suite 600  
Concord, CA 94520*

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

**L. ENTIRE AGREEMENT**

This Contract, including all Attachment, Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

**M. ELECTRONIC SIGNATURES**

This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

**[SIGNATURE PAGE FOLLOWS]**


IN WITNESS WHEREOF, San Bernardino County and Consultant have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

► *Dawn M. Rowe*  
 Dawn M. Rowe **Chair, Board of Supervisors**

Dated: JAN 24 2023  
 SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

By *Lynna Monell*  
 Lynna Monell  
 Clerk of the Board of Supervisors  
 of the San Bernardino County  
 Deputy



TOYON ASSOCIATES, INC.  
RONALD G. KNAPP  
 (Print or type name of corporation, company, contractor, etc.)

By ► *Ronald G. Knapp*  
 (Authorized signature - sign in blue/ink)

Name Ronald G. Knapp  
 (Print or type name of person signing contract)

Title Chief Operating Officer  
 (Print or Type)

Dated: 11/23/2022

Address 1800 SUTTER ST, STE 600  
CONCORD, CA 94520

FOR COUNTY USE ONLY		
Approved as to Legal Form ► <u><i>Charles Phan</i></u> Charles Phan, Deputy County Counsel Date <u>12/9/2022</u>	Reviewed for Contract Compliance ► _____ Date _____	Reviewed/Approved by Department William L. Gilbert ► <u><i>William L. Gilbert</i></u> Date <u>1/13/23</u>

## ATTACHMENT A Fixed Fee Schedule\*

Arrowhead Regional Medical Center  
Reimbursement Services Agreement  
FY 2023 - 2027

Description	Fee Type	2023	2024	2025	2026	2027
Medicare/Medi-Cal Cost Report Preparation	FF	\$29,000	\$29,500	\$30,000	\$30,500	\$31,000
Medi-Cal POS eligibility/Medicare DSH Historical prep/audit	FF	16,500	17,000	17,500	18,000	18,500
Medicare/Medi-Cal bad debt preparation/support	FF	9,000	9,250	9,500	9,750	10,000
IRIS report preparation	FF	11,750	12,000	12,250	12,500	12,750
P14 Workbook Preparation	FF	51,500	53,000	54,500	56,000	57,500
OSHPD Report	FF	16,500	17,000	17,500	18,000	18,500
AB915	FF	14,500	14,750	15,000	15,250	15,500
AB85 Realignment Redirection assistance	FFS	19,500	20,000	20,500	21,000	21,500
General Reimbursement Consulting, CAPH/DHCS Data Requests, P14 & AB85 Audit Support; SPD & GPP Report filing, OP DSH POS & Other Projects per request	FFS	475,000	490,000	505,000	520,000	535,000
Travel, Software Use and Expenses	FFS	6,000	6,000	6,000	6,000	6,000
<b>TOTAL*</b>		<b>\$649,250</b>	<b>\$668,500</b>	<b>\$687,750</b>	<b>\$707,000</b>	<b>\$726,250</b>

\*Excludes Contingency Fees

### Arrowhead Regional Medical Center DSH Outpatient POS Lookup Fee Schedule FY 2023 - 2027

The professional fees for processing Medi-Cal POS will be based on the volume of accounts processed. The POS system provides eligibility information for the past 12 months. we recommend performing this look-up process on a quarterly basis. Toyon's fees for this service will be as follows

Initial Set-up Charge each quarter \$400

#### Lookup Fee Charge/Account

Account Volume	Fee/Lookup
0-100,000	\$.05/account
100,001 - 500,000	\$ 0.030
500,001 - 1,000,000	\$ 0.025
+1,000,000	\$ 0.020

The volume described above are based on cumulative claims processed in a calendar year. Each January 1st, the account volume will be reset.

The services to be provided by Contractor for "AB Realignment Redirection assistance" and "General Reimbursement Consulting, CAPH/DHCS Data Requests, P14 & AB85 Audit Support; SPD & GPP Report filing OP DSH POS & Other Projects" in the chart to the left shall be billed on an hourly basis in accordance with the rates on Attachment B. The dollar figures in these entries in the chart to the left are estimated total figures for the services that will be rendered by Contractor.

The "Travel, Software Use and Expenses" shall be pass through expenses from the Contractor, and the dollar figures in the chart to the left is the estimated total figure for such expenses.

**ATTACHMENT B**  
**Hourly Rate Schedule**

<b>Title</b>	<b>1/1/2023</b>	<b>1/1/2024</b>	<b>1/1/2025</b>	<b>1/1/2026</b>	<b>1/1/2027</b>
CEO	\$ 550	\$ 575	\$ 590	\$ 610	\$ 630
COO	\$ 525	\$ 550	\$ 565	\$ 580	\$ 600
Vice President	\$ 450	\$ 475	\$ 490	\$ 505	\$ 520
Senior Director	\$ 400	\$ 425	\$ 440	\$ 455	\$ 470
Senior Manager	\$ 375	\$ 400	\$ 410	\$ 420	\$ 435
Director	\$ 315	\$ 330	\$ 340	\$ 350	\$ 360
Manager	\$ 290	\$ 305	\$ 315	\$ 325	\$ 335
Asst. Director	\$ 300	\$ 310	\$ 320	\$ 330	\$ 340
Senior Consultant	\$ 280	\$ 290	\$ 300	\$ 310	\$ 320
Consultant	\$ 255	\$ 265	\$ 275	\$ 285	\$ 295
Senior Analyst	\$ 225	\$ 235	\$ 245	\$ 255	\$ 265
Analyst	\$ 170	\$ 180	\$ 185	\$ 190	\$ 195
Appeals Coordinator	\$ 190	\$ 200	\$ 205	\$ 210	\$ 215
Administrative	\$ 130	\$ 135	\$ 140	\$ 145	\$ 150

**ATTACHMENT C  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (Agreement) supplements and is made a part of the contract (Contract) by and between the San Bernardino County on behalf of Arrowhead Regional Medical Center (hereinafter Covered Entity) and Toyon Associates, Inc. (hereinafter Business Associate). This Agreement is effective as of the effective date of the Contract.

**RECITALS**

**WHEREAS**, Covered Entity (CE) wishes to disclose certain information to Business Associate (BA) pursuant to the terms of the Contract, which may include Protected Health Information (PHI); and

**WHEREAS**, CE and BA intend to protect the privacy and provide for the security of the PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act), their implementing regulations, and other applicable laws; and

**WHEREAS**, The Privacy Rule and the Security Rule require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314, subdivision (a), 164.502, subdivision (e), and 164.504, subdivision (e) of the Code of Federal Regulations (C.F.R.) and contained in this Agreement; and

**WHEREAS**, Pursuant to HIPAA and the HITECH Act, BA shall fulfill the responsibilities of this Agreement by being in compliance with the applicable provisions of the HIPAA Standards for Privacy of PHI set forth at 45 C.F.R. sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.316 (Policies and Procedures and Documentation Requirements), and, 164.400, et seq. and 42 United States Code (U.S.C.) section 17932 (Breach Notification Rule), in the same manner as they apply to a CE under HIPAA;

**NOW THEREFORE**, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

**A. Definitions**

Unless otherwise specified herein, capitalized terms used in this Agreement shall have the same meanings as given in the Privacy Rule, the Security Rule, the Breach Notification Rule, and HITECH Act, as and when amended from time to time.

1. Breach shall have the same meaning given to such term under the HIPAA Regulations [45 C.F.R. §164.402] and the HITECH Act [42 U.S.C. §§17921 et seq.], and includes the definition set forth in 22 California Code of Regulations (C.C.R.) § 79901(b).
2. Business Associate (BA) shall have the same meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 U.S.C. section 17921 and 45 C.F.R. section 160.103, and includes the definition set forth in 22 C.C.R. § 79901(c).
3. Covered Entity (CE) shall have the same meaning given to such term as under the Privacy Rule and Security Rule, including, but not limited to 45 C.F.R. section 160.103.
4. Designated Record Set shall have the same meaning given to such term under 45 C.F.R. section 164.501.
5. Detect(ed) shall have the same meaning given to such term under 22 C.C.R. § 79901(f).
6. Electronic Protected Health Information (ePHI) means PHI that is maintained in or transmitted by electronic media as defined in the Security Rule, 45 C.F.R. section 164.103.
7. Individual shall have the same meaning given to such term under 45 C.F.R. section 160.103.
8. Medical Information shall have the same meeting given to such term under 22 C.C.R. § 79901(l).

9. Privacy Rule means the regulations promulgated under HIPAA by the United States Department of Health and Human Services (HHS) to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Parts 160 and 164, subparts A and E.
10. Protected Health Information (PHI) shall have the same meaning given to such term under 45 C.F.R. section 160.103, limited to the information received from, or created or received by Business Associate from or on behalf of, CE.
11. Security Rule means the regulations promulgated under HIPAA by HHS to protect the security of ePHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, subparts A and C.
12. Unsecured PHI shall have the same meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act, including, but not limited to 42 U.S.C. section 17932, subdivision (h).

## **B. Obligations and Activities of BA**

### **1. Permitted Uses and Disclosures**

BA may disclose PHI: (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) for purposes of Treatment, Payment and Operations (TPO); (iv) as required by law; or (v) for Data Aggregation purposes for the Health Care Operations of CE. Prior to making any other disclosures, BA must obtain a written authorization from the Individual.

If BA discloses PHI to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach. [42 U.S.C. section 17932; 45 C.F.R. sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)]

### **2. Prohibited Uses and Disclosures**

- i. BA shall not use, access or further disclose PHI other than as permitted or required by this Agreement and as specified in the attached Contract or as required by law. Further, BA shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. BA shall disclose to its employees, subcontractors, agents, or other third parties, and request from CE, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- ii. BA shall not use or disclose PHI for fundraising or marketing purposes.
- iii. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. (42 U.S.C. section 17935(a) and 45 C.F.R. section 164.522(a)(1)(i)(A).)
- iv. BA shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CE and as permitted by the HITECH Act (42 U.S.C. section 17935(d)(2); and 45 C.F.R. section 164.508); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to this Agreement.

### **3. Appropriate Safeguards**

- i. BA shall implement appropriate safeguards to prevent the unauthorized use or disclosure of PHI, including, but not limited to, administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the PHI BA creates, receives, maintains, or transmits on behalf of the CE, in accordance with 45 C.F.R. sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. sections 164.504(e)(2)(ii)(b) and 164.308(b).]
- ii. In accordance with 45 C.F.R. section 164.316, BA shall maintain reasonable and appropriate written policies and procedures for its privacy and security program in order to comply with the

standards, implementation specifications, or any other requirements of the Privacy Rule and applicable provisions of the Security Rule.

- iii. BA shall provide appropriate training for its workforce on the requirements of the Privacy Rule and Security Rule as those regulations affect the proper handling, use confidentiality and disclosure of the CE's PHI.

Such training will include specific guidance relating to sanctions against workforce members who fail to comply with privacy and security policies and procedures and the obligations of the BA under this Agreement.

#### 4. Subcontractors

BA shall enter into written agreements with agents and subcontractors to whom BA provides CE's PHI that impose the same restrictions and conditions on such agents and subcontractors that apply to BA with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

#### 5. Reporting of Improper Access, Use or Disclosure or Breach

Every suspected and actual Breach shall be reported immediately, but no later than one (1) business day upon discovery, to CE's Office of Compliance. Upon discovery of a Breach or suspected Breach, BA shall complete the following actions:

- i. Provide CE's Office of Compliance with the following information to include but not limited to:
  - a) Name and address of the facility where the breach occurred;
  - b) Date and time the Breach or suspected Breach occurred;
  - c) Date and time the Breach or suspected Breach was discovered or Detected;
  - d) Number of staff, employees, subcontractors, agents or other third parties and the names and titles of each person allegedly involved, including the person who performed the Breach, witnessed the Breach, used the Medical Information, or the person to whom the disclosure was made;
  - e) Name of patient(s) affected;
  - f) Number of potentially affected Individual(s) with contact information;
  - g) Description of how the Breach or suspected Breach allegedly occurred; and
  - h) Description of the Medical Information that was Breached, including the nature and extent of the Medical Information involved, including the types of individually identifiable information and the likelihood of re-identification.
- ii. Conduct and document a risk assessment by investigating without unreasonable delay and in no case later than five (5) calendar days of discovery of the Breach or suspected Breach to determine the following:
  - a) The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
  - b) The unauthorized person who had access to the PHI;
  - c) Whether the PHI was actually acquired or viewed; and
  - d) The extent to which the risk to PHI has been mitigated.
- iii. Provide a completed risk assessment and investigation documentation to CE's Office of Compliance within ten (10) calendar days of discovery of the Breach or suspected Breach with a determination as to whether a Breach has occurred. At the discretion of CE, additional information may be requested.
  - a) If BA and CE agree that a Breach has not occurred, notification to Individual(s) is not required.
  - b) If a Breach has occurred, notification to the Individual(s) is required and BA must provide CE with affected Individual(s) name and contact information so that CE can provide notification.

- c) The risk assessment and investigation documentation provided by BA to CE shall, at a minimum, include a description of any corrective or mitigation actions taken by BA.
- iv. Make available to CE and governing State and Federal agencies in a time and manner designated by CE or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a Breach or suspected Breach for the purposes of audit or should the CE reserve the right to conduct its own investigation and analysis.

6. Access to PHI

To the extent BA maintains a Designated Record Set on behalf of CE, BA shall make PHI maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule. If BA maintains ePHI, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act. If BA receives a request from an Individual for access to PHI, BA shall immediately forward such request to CE.

7. Amendment of PHI

If BA maintains a Designated Record Set on behalf of the CE, BA shall make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to, pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. section 164.526, in the time and manner designated by the CE.

8. Access to Records

BA shall make internal practices, books, and records, including policies and procedures, relating to the use, access and disclosure of PHI received from, or created or received by BA on behalf of, CE available to the Secretary of HHS, in a time and manner designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule and Security Rule and patient confidentiality regulations. Any documentation provided to the Secretary shall also be provided to the CE upon request.

9. Accounting for Disclosures

BA, its agents and subcontractors shall document disclosures of PHI and information related to such disclosures as required by HIPAA. This requirement does not apply to disclosures made for purposes of TPO. BA shall provide an accounting of disclosures to CE or an Individual, in the time and manner designated by the CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure.

10. Termination

CE may immediately terminate this agreement, and any related agreements, if CE determines that BA has breached a material term of this agreement. CE may, at its sole discretion, provide BA an opportunity to cure the breach or end the violation within the time specified by the CE.

11. Return of PHI

Upon termination of this Agreement, BA shall return all PHI required to be retained by the BA or its subcontractors, employees or agents on behalf of the CE. In the event the BA determines that returning the PHI is not feasible, the BA shall provide the CE with written notification of the conditions that make return not feasible. Additionally, the BA must follow established policies and procedures to ensure PHI is safeguarded and disposed of adequately in accordance with 45 C.F.R. section 164.310, and must submit to the CE a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed. BA further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any PHI retained by BA or



its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures.

#### 12. Breach by the CE

Pursuant to 42 U.S.C. section 17934, subdivision (b), if the BA is aware of any activity or practice by the CE that constitutes a material Breach or violation of the CE's obligations under this Agreement, the BA must take reasonable steps to address the Breach and/or end eliminate the continued violation, if the BA has the capability of mitigating said violation. If the BA is unsuccessful in eliminating the violation and the CE continues with non-compliant activity, the BA must terminate the Agreement (if feasible) and report the violation to the Secretary of HHS.

#### 13. Mitigation

BA shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to BA of a use, access or disclosure of PHI by BA, its agents or subcontractors in violation of the requirements of this Agreement.

#### 14. Costs Associated to Breach

BA shall be responsible for reasonable costs associated with a Breach. Costs shall be based upon the required notification type as deemed appropriate and necessary by the CE and shall not be reimbursable under the Agreement at any time. CE shall determine the method to invoice the BA for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

- Postage;
- Alternative means of notice;
- Media notification; and
- Credit monitoring services.

#### 15. Direct Liability

BA may be held directly liable under HIPAA and California law for impermissible uses and disclosures of PHI; failure to provide breach notification to CE; failure to provide access to a copy of ePHI to CE or individual; failure to disclose PHI to the Secretary of HHS when investigating BA's compliance with HIPAA; failure to provide an accounting of disclosures; and, failure to enter into a business associate agreement with subcontractors.

#### 16. Indemnification

BA agrees to indemnify, defend and hold harmless CE and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from the acts or omissions of BA, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of CE's PHI and Medical Information, including without limitation, any Breach of PHI or Medical Information, or any expenses incurred by CE in providing required Breach notifications under federal and state laws.

#### 17. Judicial or Administrative Proceedings

CE may terminate the Contract, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the BA has been joined that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

#### 18. Insurance

In addition to any general and/or professional liability insurance coverage required of BA under the Contract for services, BA shall provide appropriate liability insurance coverage during the term of this Agreement to cover any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy, or confidentiality

obligations of BA, its agents or employees, under this Agreement and under HIPAA 45 C.F.R. Parts 160 and 164, Subparts A and E.

19. Assistance in Litigation or Administrative Proceedings

BA shall make itself, and any subcontractors, employees, or agents assisting BA in the performance of its obligations under the Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers, or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where BA or its subcontractor, employee or agent is a named adverse party.

**C. Obligations of CE**

1. CE shall notify BA of any of the following, to the extent that such may affect BA's use, access, maintenance or disclosure of PHI:
  - i. Any limitation(s) in CE's notice of privacy practices in accordance with 45 C.F.R. section 164.520.
  - ii. Any changes in, or revocation of, permission by an individual to use, access or disclose PHI.
  - iii. Any restriction to the use, access or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. section 164.522.

**D. General Provisions**

1. Remedies

BA agrees that CE shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which CE may have at law or in equity in the event of an unauthorized use, access or disclosure of PHI by BA or any agent or subcontractor of BA that received PHI from BA.

2. Ownership

The PHI shall be and remain the property of the CE. BA agrees that it acquires no title or rights to the PHI.

3. Regulatory References

A reference in this Agreement to a section in the Privacy Rule and Security Rule and patient confidentiality regulations means the section as in effect or as amended.

4. No Third-Party Beneficiaries

Nothing express or implied in the Contract or this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5. Amendment

The parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of the Contract or this Agreement may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this Agreement when and as necessary to comply with applicable laws. If either party does not agree to so amend this Agreement within 30 days after receiving a request for amendment from the other, either party may terminate the Agreement upon written notice. To the extent an amendment to this Agreement is required by law and this Agreement has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to be incorporated into this Agreement automatically and without further action required by either of the parties. Subject to the foregoing, this Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by BA and CE.

6. Interpretation

Any ambiguity in this Agreement shall be resolved to permit CE to comply with the Privacy and Security Rules, the HITECH Act, and all applicable patient confidentiality regulations.

7. Compliance with State Law

In addition to HIPAA and all applicable HIPAA Regulations, BA acknowledges that BA and CE may have confidentiality, privacy, and breach notification obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq. ("CMIA")) and 22 C.C.R. § 79001 et seq. If any provisions of this Agreement or HIPAA Regulations or the HITECH Act conflict with CMIA or any other California State law regarding the degree of protection provided for PHI/Medical Information and patient medical records, then BA shall comply with the more restrictive requirements.

8. Survival

The respective rights and obligations and rights of CE and BA relating to protecting the confidentiality or a patient's PHI/Medical Information shall survive the termination of the Contract or this Agreement.

SAN BERNARDINO COUNTY

TOYON ASSOCIATES, INC.

► *Dawn M. Rowe*

By ► *Ronald G. Knapp*  
(Authorized signature – sign in blue ink)

Dawn M. Rowe  
Chair, Board of Supervisors

Name RONALD G. KNAPP  
(Print or type name of person signing contract)

Dated: JAN 24 2023  
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Title COO  
(Print or Type)

By *Lynna Monell*  
Lynna Monell  
Clerk of the Board of Supervisors  
of the San Bernardino County  
Deputy

Dated: 11/23/2022

Address 1800 SUTTER ST STE 600  
CONCORD, CA 94520