

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

September 14, 2021

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Agreements with Data Innovations for Maintenance and Support, Professional Services and Training

RECOMMENDATION(S)

1. Approve Maintenance and Support Services **Agreement No. 21-645** with Data Innovations, to provide maintenance and support services for the instrument manager interface system and software licensed by the County under Contract No. 20-1061, in the amount of \$63,203, for a total contract period from September 14, 2021, through September 13, 2026.
2. Approve Professional Services **Agreement No. 21-646** with Data Innovations, to provide professional services for the instrument manager interface system and software licensed by the County under Contract No. 20-1061, in the amount of \$164,411, for a total contract period from September 14, 2021, through September 13, 2022.
3. Designate the Director of Arrowhead Regional Medical Center as the authorized official to approve and sign non-financial Change Orders related to the Professional Services Agreement, provided such Change Orders do not extend the term of the agreement, subject to review by County Counsel.
4. Direct the Director of Arrowhead Regional Medical Center to transmit all Change Orders to the Clerk of the Board of Supervisors within 30 days of execution.

(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

The approval of these agreements with Data Innovations (DI) will not result in the use of Discretionary General Funding (Net County Cost). The cost of \$227,614 is funded by State Medi-Cal, Federal Medicare, private insurances, and other departmental revenue. Funding sources may change in the future pending any legislative activity related to the repeal and/or replacement of the Affordable Care Act. Sufficient appropriation and revenue are included in the Arrowhead Regional Medical Center (ARMC) 2021-22 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

Data Innovations provides laboratory software solutions. DI's instrument manager delivers industry-leading laboratory enterprise management solutions spanning connectivity, quality, productivity, analytics and intelligence, and performance and reliability. The purchased interface will allow all of the existing laboratory instrument interface to connect to the new electronic health record system by Epic and provide test results and other information directly to the

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caregiver. This software will also provide information to aid in the administration and operations of the laboratory and its testing instruments. The software allows the testing instruments to report the results to the electronic medical record. All professional services fees are for establishing the interfaces with Epic, and the maintenance and support fees are for the ongoing maintenance and support of the interfaces.

DI's Maintenance and Support Services Agreement (MSSA) is DI's standard commercial contract, as negotiated between the parties, which includes terms that differ from the standard County contract and omits certain County standard contract terms. The non-standard and missing terms include the following:

1. The MSSA does not require DI to indemnify the County for any claims.
 - 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: DI is not required to defend, indemnify or hold the County harmless from any claims arising from the maintenance and support of the software, including indemnification for claims arising from DI's negligent or intentional acts and intellectual property infringement. If the County is sued for any claim caused by DI's maintenance and support of the software, the County may be solely liable for the costs of defense and damages, which could exceed the total contract amount.
2. DI's limitation of liability to the County under the MSSA of \$500,000.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the contract amount leaving the County financially liable for the excess.
3. Payment terms are Net 30 from the effective date of the agreement.
 - County standard payment terms are Net 60 days with no interest or late payment penalties.
 - Potential Impact: County standard processing time is 60 days or more. Failing to pay within 30 days will result in a material breach of the contract, which would allow DI to terminate the contract and seek other legal remedies, which could exceed the contract amount.
4. The MSSA does not allow termination for convenience.
 - The County standard contract gives the County the right to terminate the Contract, for any reason, with a 30 day written notice of termination without any obligation other than to pay amounts for services rendered and expenses reasonably incurred prior to the effective date of termination.
 - Potential Impact: Any attempted termination by County without cause would result in payment liability for the full contract amount, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.

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DI's Professional Services Agreement (PSA) is DI's standard commercial contract, as negotiated between the parties, which includes terms that differ from the standard County contract and omits certain County standard contract terms. The non-standard and missing terms include the following:

1. DI may assign the PSA without notice and without County consent upon a change of control or sale of assets, reorganization, or merger subject to certain restrictions.
 - The County must approve any assignment of the contract.
 - Potential Impact: DI may assign the contract to a third party or business with which the County is legally prohibited from doing business due to issues of Federal debarment or suspension and conflict of interest, without the County's knowledge.
2. DI's limitation of liability to the County under the PSA is \$500,000, excluding indemnity obligations, gross negligence, willful misconduct, or violation of law.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the contract amount leaving the County financially liable for the excess.

On October 27, 2020 (Item No. 14), the Board of Supervisors approved a non-financial End User License (EULA) Agreement No. 20-1061 with Data Innovations LLC, for use of software used in conjunction with Roche laboratory equipment. The agreements included in Recommendations No. 1 and No. 2 above reference the already agreed to EULA found Agreement No. 20-1061 allowing ARMC to use the necessary software for the interface.

PROCUREMENT

This procurement is non-competitive as it stems from an existing agreement and is based on functional specification and expertise, as ARMC has DI software and equipment already integrated into ARMC's current laboratory functions. DI is one of the few companies with the available expertise to provide the functionality for both the existing electronic health record (MediTech), and the new electronic health record (Epic). County Purchasing recognizes functional specification as a valid non-competitive justification and supports procurement of this software license and equipment from DI.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5455) on August 24, 2021; Purchasing Department (Ariel Gill, Buyer, 777-0722) on August 24, 2021; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on August 24, 2021; Finance (Yael Verduzco, Administrative Analyst, 387-5285) on August 26, 2021; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on August 27, 2021.

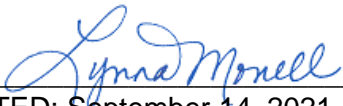
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY  _____
DATED: September 14, 2021



cc: ARMC- Gilbert w/agree
Contractor- C/O ARMC w/agree
File- w/agree
LA 09/15/2021