

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

June 28, 2022

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Agreement with United Parcel Service, Inc., for Software Licenses and Equipment

RECOMMENDATION(S)

Approve **Agreement No. 22-557** (Client Agreement No. UPSPSICAF04-0619) with United Parcel Service, Inc. and incorporated documents listed below, including non-standard terms, for the use of TrackPad equipment and software licenses in the amount of \$22,066, plus applicable taxes for the five-year period from June 28, 2022 through June 27, 2027.

1. UPS Customer Solutions Client Agreement UPSPSICAF06-1221
2. General Terms and Conditions UPSPSIGTC05-122, as amended
(Presenter: William L. Gilbert, Director, 580-6150)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The cost of \$22,066, plus applicable taxes for the use of TrackPad equipment and software licenses at Arrowhead Regional Medical Center (ARMC) is funded by State Medi-Cal, Federal Medicare, private insurances, and other departmental revenue. Funding sources may change in the future pending any legislative activity related to the repeal and/or replacement of the Affordable Care Act. Adequate appropriation and revenue have been included in the ARMC 2021-22 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

The agreement with United Parcel Service, Inc. (UPS) will allow ARMC to upgrade its inventory management system and improve efficiency through the use of UPS' proven hardware and software technologies. The use of the UPS TrackPad in ARMC's warehouses will provide inventory control and visibility, ensure that the inventory is managed through climate and temperature-controlled environments, and allow for reporting, measurement and compliance throughout the supply chain.

The use of this equipment and software will allow new and stored inventory within the ARMC warehouse to move swiftly through the Hospital's various departments, with a tracking system to confirm fulfillment and identify areas where replenishment of products and supplies may be required. The approval of this agreement with UPS will significantly improve the delivery of services by ARMC's clinical and non-clinical staff to residents of San Bernardino County by placing the needed materials timely and efficiently into the workforce.

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The UPS Client Agreement incorporates the General Terms and Conditions (GTC). The GTC is UPS' standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. While the parties negotiated certain contract terms to County standards, UPS would not agree to all of the County standard terms. The non-standard and missing terms include the following:

1. UPS may assign the contract without notice to the County and without the County's approval.
 - The County must approve any assignment of the contract.
 - Potential Impact: UPS could assign the contract to a third party or business with which the County is legally prohibited from doing business due to issues of Federal debarment or suspension and conflict of interest, without the County's knowledge. Should this occur, the County would be out of compliance with the law until it becomes aware of the assignment and terminates the contract.
2. The contract does not include certain standard County insurance requirements, including the waiver of subrogation for any policy except Workers' Compensation.
 - The County standard contract requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.
 - Potential Impact: No waiver of subrogation may allow UPS' insurer to bring suit against the County, which could result in expenses that exceed the total contract amount.
3. UPS' total aggregate liability to the County under its intellectual property indemnification obligations is limited to \$100,000. For all other claims, UPS' total aggregate liability to the County is limited to \$50,000, excluding UPS' 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.
4. The County's right to bring legal claims is limited to six months after the first event giving rise to the claim. Otherwise, the claim is irrevocably waived.
 - The County standard contract does not include a limit on the time to bring action.
 - Potential Impact: Limiting the County's ability to bring suit to six months amounts to a waiver of the Statute of Limitations for claims and shortens the period of time in which the County may file a lawsuit under the contract. UPS' right to bring claims is not similarly limited, so UPS may bring claims any time within the Statute of Limitations.

The UPS Client Agreement also incorporates the Local Software Terms and Conditions (LSTC). The LSTC is UPS' standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. While the parties negotiated certain contract terms to County standards, UPS would not agree to all of the County standard terms. The non-standard and missing terms include the following:

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1. The County is required to indemnify UPS against all claims arising from the County's use of the software other than in accordance with the LSTC.
 - The County standard contract does not include any indemnification or defense by the County of a Contractor.
 - Potential Impact: By agreeing to indemnify UPS, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against UPS without such limitations and the County would be responsible to defend and reimburse UPS for costs, expenses, and damages, which could exceed the total contract amount.

2. The term of the LSTC automatically renews on an annual basis until terminated by either party.
 - County Policy 11-06SP does not permit indefinite term or automatically renewing contracts unless approved by the Board.
 - Potential Impact: There is no end term to the LSTC and the County is indefinitely bound to the terms and conditions of the contract until the County gives notice of non-renewal no less than 90 days prior to the renewal period or terminates at its convenience upon 60 days prior written notice without a right to refund and payment of the total amount of fees due through the end of the term.

ARMC recommends approval of the contract with UPS, including the non-standard terms, to provide for the health and safety of County residents by ensuring the hospital has the infrastructure in place to manage and distribute its inventory through an efficient supply chain management process.

PROCUREMENT

Purchasing supports this non-competitive procurement based on specialized credentials. A large portion of ARMC's inventory is delivered via UPS. As such, the equipment selected is the best option to increase the efficiency of the hospital's inventory management system as it is compatible with most deliveries.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5455) on June 16, 2022; Purchasing (Ariel Gill, Buyer, 777-0722) on June 16, 2022; Risk Management (Victor Tordesillas, Director, 386-8623) on May 19, 2022; ARMC Finance (Chen Wu, Finance Budget Officer, 580-3165) on June 2, 2022; Finance (Jenny Yang, Administrative Analyst, 387-4884) on June 9, 2022; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-5423) on June 9, 2022.

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: June 28, 2022



cc: ARMC - Gilbert w/agree
Contractor - C/O ARMC w/agree
File - w/agree
CCM 07/13/2022