

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

February 8, 2022

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Agreement with Lansweeper NV for Endpoint Technology Management Software

RECOMMENDATION(S)

Approve Enterprise Terms of Use **Agreement No. 22-71** with Lansweeper NV, including non-standard terms, for endpoint technology management software in the amount of \$21,000 for the period of February 8, 2022 through February 7, 2023, with the option for up to four additional one-year renewals.

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

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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

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

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The cost of \$21,000 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 Arrowhead Regional Medical Center (ARMC) 2021-22 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

The agreement with Lansweeper NV (Lansweeper) will improve ARMC operations by assisting ARMC's Information Management Department to manage endpoint devices such as computers, printers, and various other Information Technology (IT) devices. Lansweeper software will consolidate all asset details in a centralized web-based, System of Record, for endpoint technologies at the hospital location and all remote sites as well. It gives complete end-to-end visibility of the network, and will save valuable time and resources with inventory and asset management.

Lansweeper's Enterprise Terms of Use is Lansweeper's standard commercial contract, 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. Governing law is the State of New York.
 - The County standard contract requires California governing law.

- Potential Impact: The contract will be interpreted under New York law. Any questions, issues or claims arising under this contract will require the County to hire outside counsel competent to advise on New York law, which may result in fees that exceed the total contract amount.
2. Lansweeper 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: Lansweeper 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. County Counsel cannot advise on whether and to what extent New York law may permit or restrict a party's right to assign without an express provision in the contract.
 3. The contract does not address attorneys' fees and costs.
 - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: County Counsel cannot advise on, whether and to what extent, New York law may affect a party's requirement to pay the prevailing party's attorneys' fees and costs in a legal action where no specific provision is provided in the contract.
 4. The contract does not include certain standard County insurance requirements, including the waiver of subrogation.
 - 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 Lansweeper's insurer to bring suit against the County, which could result in expenses that exceed the total contract amount.
 5. Lansweeper's total aggregate liability to the County is limited to the prorated total license fees paid to Lansweeper during the 12-month period preceding the date upon which the claim first arose, except for Lansweeper's indemnification obligations, willful misconduct, or violation of the laws applicable to Lansweeper.
 - 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. In addition, the County's liability under the contract is not similarly limited. County Counsel cannot advise on, whether and to what extent, New York law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
 6. The County may not terminate the contract for convenience. In addition, the County agrees that fees are non-refundable, non-cancellable and non-creditable.
 - 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.

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- Potential Impact: Upon any termination by either party regardless of cause, the County is required to pay the full amount due for the term, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.

7. Venue is in competent courts of State of New York.

- The County standard contract requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
- Potential Impact: Having a venue in any court in the State of New York may result in additional expenses that exceed the amount of the contract.

ARMC recommends approval of the agreement to provide for the health and safety of County residents through the efficient management, maintenance and security of endpoint technologies used in the healthcare setting.

PROCUREMENT

Purchasing supports this non-competitive procurement based on functional and system compatibility as Lansweeper is also ARMC's current IT service desk platform.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5455) on January 20, 2022; Purchasing (Ariel Gill, Buyer III, 777-0722) on January 25, 2022; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on January 20, 2022; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-5423) on January 24, 2022.

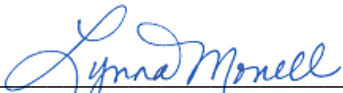
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Record of Action of the Board of Supervisors
San Bernardino County

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: February 8, 2022



cc: ARMC- Gilbert w/agree
Contractor- C/O ARMC w/agree
File- w/agree
LA 02/9/2022