

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

January 10, 2023

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Master Agreement with Net Health Systems, Inc. for Maintaining and Archiving Employee Healthcare Records

RECOMMENDATION(S)

Approve Master Agreement with Net Health Systems, Inc., including non-standard terms, for a software solution to track employee health data and monitor regulatory compliance, in the amount of \$46,170 for the retroactive contract period of January 1, 2023 through December 31, 2025, plus an additional year through December 31, 2026, for a cost to be determined. (Presenter: William L. Gilbert, Director, 580-6150)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The contract amount of \$46,170 is for an initial three-year subscription period. The cost of the final fourth year will be provided by Net Health Systems, Inc. (Net Health) before the end of the initial subscription period and presented to the Board of Supervisors (Board) for approval. This item 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 are included in the Arrowhead Regional Medical Center (ARMC) 2022-23 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

The Net Health Master Agreement (Agreement) will allow ARMC to continue to use Net Health's software for the ARMC Employee Health Service database. The software provides continuity in maintaining and archiving over 5,000 ARMC healthcare personnel immunization and exposure records. Changing the software would result in loss of historical data for over 5,000 healthcare personnel and could result in penalties from the California Division of Occupational Safety and Health (Cal/OSHA) and other regulatory agencies. A separate database for healthcare personnel records is required as per California Code of Regulations (CCR) Title 22 Section 70723.

The software allows for scanning capability, thus eliminating manual filing and storage space for over 5,000 paper files. The application allows for easy retrieval of records to satisfy follow-up of communicable disease exposures and other internal and external reports. The software

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currently interfaces with Employee Management and Compensation System (EMACS) for work related information and the California Immunization Registry (CAIR) for reporting immunizations at the state level.

Due to continued negotiations, the Agreement was not approved until December 7, 2022, resulting in the retroactive effective date of January 1, 2023. This item is being presented to the Board for approval at the earliest available meeting after completion of the required financial and legal reviews. Although the recommended Master Agreement is retroactively effective, no financial action will be taken until the Board has approved this item.

The Agreement is Net Health's 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, Net Health would not agree to the County standard terms. The non-standard and missing terms include the following:

1. Governing law is the Commonwealth of Pennsylvania.
 - The County standard contract requires California governing law.
 - Potential Impact: The Agreement will be interpreted under Pennsylvania law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on Pennsylvania law, which may result in fees that exceed the total Agreement amount.
2. Net Health may assign the Agreement without notice to the County and without the County's approval to: (i) any affiliate; (ii) any purchaser of any or all or substantially all of the assets of Net Health; or (iii) the successor entity as a result of a merger, reorganization, consolidation, conversion or change of control, whether by operation of law or otherwise.
 - In the County standard contract the County must approve any assignment of the contract.
 - Potential Impact: Net Health could assign the Agreement to a third party or business with which the County is legally prohibited from doing business due to issues of Federal debarment or suspension and conflict of interest, without the County's knowledge. Should this occur, the County would be out of compliance with the law until it becomes aware of the assignment and terminates the Agreement. County Counsel cannot advise on whether and to what extent Pennsylvania law may permit or restrict a party's right to assign without an express provision in the Agreement.
3. There is no provision in the Agreement addressing each party's responsibility for paying attorneys' fees.
 - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: County Counsel cannot advise on, whether and to what extent, Pennsylvania law may affect a party's requirement to pay the prevailing party's attorneys' fees and costs in a legal action where no specific provision is provided in the Agreement.
4. The County is required to indemnify Net Health against third party claims arising from the negligent acts or omissions of the County.

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- The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify Net Health, 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 Net Health without such limitations and the County would be responsible to defend and reimburse Net Health for costs, expenses, and damages, which could exceed the total Agreement amount. County Counsel cannot advise on, whether and to what extent, Pennsylvania law may limit or expand this Agreement term.
5. The Agreement does not require Net Health to meet the County's insurance standards as required pursuant to County Policy 11-07.
- The County Policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and set forth in the County standard contract.
 - Potential Impact: The County has no assurance that Net Health will be financially responsible for claims that may arise from the County's use of the software, which could result in expenses to the County that exceed the total Agreement amount.
6. Net Health limits its maximum liability to the County under its indemnification obligations to three times the fees paid under the applicable purchase schedule in the 12 months before the claim arose and to the fees paid under the applicable purchase schedule in the 12 months before the claim arose for all other claims. The County's liability to Net Health is not similarly limited.
- The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the Agreement amount leaving the County financially liable for the excess. County Counsel cannot advise on, whether and to what extent, Pennsylvania law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
7. Payment terms are as set forth in Purchase Schedules. Payments not made when due will be subject to interest charges of 1.5% per month and will accrue monthly on all outstanding balances until paid. In addition, if payment is not received within 60 days of the due date, any and all warranties will be voided, and any support and implementation services will be suspended until payment is received. If the County fails to pay all amounts due, Net Health will provide the County with a copy of its data in a comma delimited file, and the County's access to the software will be disabled.
- 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 make timely payments will result in a material breach of the Agreement, which would allow Net Health to take any and all actions stated in the Agreement and to terminate the Agreement and seek other legal remedies, including charging the County interest at a rate of 1.5% and attorneys' fees and collection costs, which would exceed the Agreement amount.

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8. The County may not terminate the Agreement for convenience. In addition, the County agrees to a non-cancelable payment obligation and non-refundable fees.
 - 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: The County can only terminate the during the term of an uncured breach by Net Health. Any attempted termination by County without cause would result in payment liability for the full Agreement amount, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.

9. There is no stated venue in the Agreement.
 - The County standard contract requires the venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: Net Health is located in Allegheny County, Pennsylvania. Having no express venue in the Agreement means that Allegheny County, Pennsylvania venue could be applied to this Agreement, which may result in additional expenses that exceed the amount of the Agreement.

ARMC recommends approval of the Net Health Agreement, including non-standard terms, to provide for the safety, health and social service needs of County residents by maintaining and archiving ARMC healthcare personnel immunization and exposure records.

PROCUREMENT

The Purchasing Department supports this non-competitive procurement as ARMC is currently utilizing Net Health software and changing vendors would result in the loss of historical data needed to remain in compliance with regulatory agencies.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on December 9, 2022; Purchasing (Ariel Gill, Buyer III, 777-0722) on December 12, 2022; Risk Management (Victor Tordesillas, Director, 386-8623) on November 29, 2022; ARMC Finance (Chen Wu, Finance Budget Officer, 580-3165) on December 13, 2022; Finance (Jenny Yang, Administrative Analyst, 387-4884) on December 15, 2022; and County Finance and Administration (Valerie Clay, Deputy Executive Officer 387-5423) on December 19, 2022.

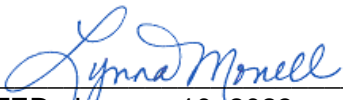
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Record of Action of the Board of Supervisors
San Bernardino County

OFF CALENDAR

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: January 10, 2023



cc: File- Medical Center
LA 01/13/2023