

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

October 5, 2021

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Agreement with Joint Commission Resources, Inc. for Quality Improvement and Compliance Consulting Services

RECOMMENDATION(S)

1. Approve Master Services and Subscription **Agreement No. 21-727** with Joint Commission Resources, Inc., to provide quality improvement and compliance consulting services in the not-to-exceed contract amount of \$400,000, from October 5, 2021 through October 4, 2026.
2. Designate the Director of Arrowhead Regional Medical Center as the authorized official to approve and sign Statements of Work under the terms of the Master Services and Subscription Agreement, subject to review by County Counsel, so long as the aggregate costs do not exceed \$400,000 and do not exceed the contract period.

(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 not-to-exceed cost of \$400,000 for the services to be provided under the Agreement by the Joint Commission Resources, Inc. will be funded by State Medi-Cal, Federal Medicare, private insurances, and other departmental revenue. 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 Master Services and Subscription Agreement ("Master Agreement") with Joint Commission Resources, Inc. will enable ARMC to advance quality improvement and patient safety efforts. Joint Commission Resources is owned by The Joint Commission, the national accrediting body for ARMC. The Joint Commission seeks to continuously improve health care for the public by evaluating health care organizations such as hospitals. The Joint Commission accredits and certifies more than 22,000 health care organizations and programs in the United States, and is the nation's oldest and largest accrediting body in health care. Joint Commission Resources offers educational and consultation services, publications, and software to complement The Joint Commission's accreditation experience.

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Since July 2018, Joint Commission Resources has provided consulting services to ARMC with the latest best practices and education that have led to the hospital's continued accreditation with The Joint Commission and the Centers for Medicare and Medicaid Services. Joint Commission Resources provides consultants with expertise in a variety of healthcare areas including: acute care, nursing, behavioral health and ambulatory clinics. Additionally, ARMC's leadership receives training, education, and routinely conducts mock surveys with Joint Commission Resources to prepare for accreditation surveys. Lastly, products can be purchased from Joint Commission Resources to advance ARMC's quality improvement efforts and patient safety activities.

The specific scope of work will be determined by Statements of Work, which will detail the services to be provided, the deliverables, and specific fees to be paid, all subject to the terms and conditions of the Master Agreement. Approval of Recommendation No. 2 will authorize the Director of ARMC to approve and execute the Statements of Work, subject to review by County Counsel, so long as they do not exceed the aggregate amount of \$400,000, and do not exceed the five-year contract period of the Master Agreement.

The Master Agreement is the Joint Commission Resources' standard commercial Master Service and Subscription Agreement, negotiated by the parties, that include the following non-standard terms:

1. The Agreement 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: There is no provision in the contract addressing each party's responsibility for paying attorneys' fees. County Counsel cannot advise on, whether and to what extent, non-California state law may affect a party's requirement to pay the prevailing party in a legal action where no specific provision is provided in the contract.
2. County is required to notify Joint Commission Resources prior to any legally required disclosures of confidential information.
 - The County standard contract does not require notice.
 - Potential Impact: The County will need to be aware of its obligation to notify Joint Commission Resources prior to any disclosure, including in response to a Public Records Act request. Failure to do so may result in a breach of the contract.
3. The Agreement is silent on governing law and venue.
 - The County standard contract requires California governing law and venue to be in the San Bernardino County Superior Court, San Bernardino District.
 - Potential Impact: The contract is silent on governing law and venue. This results in uncertainty over which state's laws will govern the interpretation of the contract, and leads to ambiguity in interpretation of the contract terms. Joint Commission Resources is a corporation based in the State of Illinois. The contract could be interpreted under any state law depending on where the claim is brought, including Illinois or California. Any questions, issues or claims arising under this contract could require the County to hire outside counsel competent to advise on the applicable state law, which may result in fees that exceed the total contract amount.

4. The Agreement does not require Joint Commission Resources to indemnify the County, including for intellectual property infringement claims.
 - 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. The County standard contract general 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.
 - Potential Impact: Joint Resources Commission is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from Joint Resources Commission's negligent or intentional acts and intellectual property infringement. If the County is sued for any claim, including intellectual property infringement based on its use of Joint Resources Commission's software or services, the County may be solely liable for the costs of defense and damages. County Counsel cannot advise on whether and to what extent Illinois law may allow the County to require Joint Resources Commission to defend or indemnify it absent an express provision in the contract.
5. The Agreement does not require Joint Commission Resources to meet the County insurance standards.
 - 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: The contract does not include County standard insurance requirements. This means that the County has no assurance that Joint Commission Resources will be financially responsible for claims that may arise as a result of the conduct of the vendor.
6. Except for damages finally awarded that are solely attributable to and directly caused by the willful misconduct or gross negligence of Joint Commission Resources, as determined by a court of competent jurisdiction, the maximum aggregate liability of Joint Commission Resources will be no greater than total fees paid in the previous 12 months by the County for the portion of the services provided under the relevant statement of work giving rise to the claim.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Joint Resources Commission caps its liability to the County as discussed above. 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, Illinois law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
7. The Business Associate Agreement, which is Exhibit A, to the Master Service and Subscription Agreement is the Joint Commission Resources' standard business associate agreement, and does not include indemnification for the disclosure or misuse of protected health information.

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- The County standard Business Associate Agreement requires the contractor to indemnify the County for claims regarding the use, access, maintenance or disclosure of Protected Health Information, including expenses incurred in complying with notifications.
- Potential Impact: Any liability that the County may incur from a data breach exposing protected health information, or the misuse of protected health information would be subject to the limitations cap in the contract, leaving the County financially liable for the excess.

ARMC recommends approval of this Agreement, including all non-standard terms, as it will enable the hospital to maintain and improve operations throughout the facility to ensure safe, quality care is delivered to all patients.

PROCUREMENT

Purchasing supports the non-competitive procurement of services with the Joint Commission Resources, Inc. as the services that will be delineated in future Statements of Work are proprietary to Joint Commission Resources – a wholly owned subsidiary of the regulatory agency, The Joint Commission.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel, 387-5455) on September 15, 2021; Purchasing (Ariel Gill, Buyer III, 777-0722) on September 21, 2021; Risk Management (Victor Tordesillas, Director, 387-5564) on September 23, 2021; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on September 14, 2021; Finance (Yael Verduzco, Administrative Analyst, 387-5285) on September 20, 2021; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on September 20, 2021.

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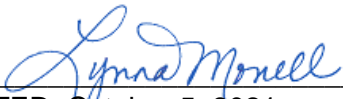
Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Col. Paul Cook (Ret.)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: October 5, 2021



cc: ARMC- Gilbert w/agree
Contractor- C/O ARMC w/agree
File- w/agree
LA 10/6/2021