



San Bernardino County

Legislation Text

File #: 4064, Agenda Item #: 16

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

May 4, 2021

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

License Agreement with American Medical Association to Access Web-based Training

RECOMMENDATION(S)

Approve License Agreement with American Medical Association Membership Resident Group, in the not-to-exceed amount of \$40,000, to access and use the Web-based training known as Graduate Competency Education Program, for the contract period beginning May 5, 2021 through December 31, 2025.
(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 the recommendation will not result in the use of Discretionary General Funding (Net County Cost). The not-to-exceed cost of \$40,000, from May 5, 2021 through December 31, 2025, is funded by State Medical, 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) 2020-21 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

Approval of this item will allow ARMC to provide resident physicians web-based training material designed to refresh and increase their medical knowledge by offering readily available curricula. It also allows senior leadership to have access to reports, while allowing residents access to numerous courses through paced learning.

American Medical Association (AMA) only provides Graduate Competency Education Program (GCEP) rates on an annual basis that are determined according to the number of participating resident roster, which may fluctuate at ARMC from year to year. For that reason, ARMC has set the total not-to-exceed contract amount at \$40,000 or about at \$8,000 annually.

The AMA Resident Group Agreement is its standard commercial license agreement, as negotiated by the County, which lack many of the standard County contract terms, including the following:

Termination

There is no termination for convenience provision in the Agreement.

- The County standard contract gives the County the right to terminate the contract, for any reason, with a 30 day written notice of termination.
- Potential Impact: The lack of a termination for convenience provision in the Agreement means the County can only terminate the agreement for a material breach by AMA.

Indemnification

The Agreement does not require AMA to indemnify the County under any circumstances, including for intellectual property right claims.

- The County 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: AMA is not contractually required to defend or indemnify the County from any claims. If the County is sued for any claim arising out of AMA's conduct, the County may be solely liable for the costs of defense and damages, which could exceed the total contract amount.

Insurance

The Agreement does not require AMA 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 Agreement does not include the County standard insurance requirements. This means that the County has no assurance that AMA will be financially responsible for claims that may arise, which could result in expenses to the County that exceed the total contract amount.

Governing Law and Venue

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.
- Potential Impact: The agreement is silent on governing law and venue. This results in uncertainty over which state's laws will govern the interpretation of the Agreement, and leads to ambiguity in interpretation of the Agreement terms. The Agreement could be interpreted under any state law depending on where the claim is brought, including Illinois or California. Additionally, the lack of an explicit provision on venue means that there is a potential that any action that arises under the Agreement may be brought in Illinois. Any questions, issues, or claims arising under the Agreement could require the County to hire outside counsel competent to advise on the applicable state law, which may result in fees and expenses to the County.

Attorney's Fees

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 Agreement addressing each party's responsibility for paying attorneys' fees. County Counsel cannot advise on, whether and to what extent, Illinois 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.

ARMC recommends approval of the Agreement with the AMA, including the non-standard terms, which will allow ARMC to operate in a fiscally-responsible and business-like manner while providing ongoing resident physician training that provides for the safety, health and social service needs of County residents.

PROCUREMENT

The procurement of AMA GCEP is non-competitive. GCEP is created and maintained by the American Medical Association, the sole source of this proprietary product, providing resident physicians access to curriculum while allowing them membership in the American Medical Association. Purchasing supports this non-competitive procurement.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel, 387-5455) on April 5, 2021; Purchasing Department (Ariel Gill, Buyer II, 777-0722) on April 6, 2021; ARMC Finance Budget Officer (Chen Wu, ARMC Finance Budget Officer, 580-3165) on April 7, 2021; Finance (Yael Verduzco, Administrative Analyst, 387-5285) on April 14, 2021; and County Finance and Administration (Matthew Erickson, Chief Financial Officer, 387-5423) on April 18, 2021.