

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

May 18, 2021

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Agreements with Georgia Pacific, GP Marketing Services, and Team Custodial Services, Inc. for Dispenser and Dispenser Installation Services

RECOMMENDATION(S)

1. Approve Dispenser Lease **Agreement No. 21-367** and Addendum with Georgia Pacific for lease of hygienic dispensers with no direct cost from Georgia Pacific.
2. Approve Dispenser Installation **Agreement No. 21-368** with GP Marketing Services and Team Custodial Services, Inc., for installation of hygienic dispensers, effective May 18, 2021 through May 17, 2024, at no direct cost from GP Marketing Services or Team Custodial Services, Inc.

(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 agreements and addendum will not result in the use of Discretionary General Funding (Net County Cost) as there are no costs billed to the county directly by Georgia Pacific (GP), GP Marketing Services, or Team Custodial Services, Inc (TCS). Medline Industries, Inc. is Arrowhead Regional Medical Center's (ARMC) product distributor and any associated costs will be billed through that pre-existing Medline agreement (Contract No. 13-336), but these agreements are required to be executed to obtain the dispensers through Medline.

BACKGROUND INFORMATION

Approval of these agreements and addendum will allow ARMC to lease GP's touchless dispensers. These will reduce the current cost, usage, and loss of our current paper towel dispensers while increasing infection prevention measures. Thus, it will provide for the health and social services needs of County residents. The dispensers will be obtained through the County's agreement with Medline Industries, Inc. (Contract No. 13-336) who serves as both GP's and ARMC's primary distributor, but Medline requires that the County execute the related lease agreement with GP and the dispenser installation agreement with GP Marketing Services and TCS.

The dispenser agreements and addendum are GP's standard dispenser lease agreement with terms negotiated by the parties that include the following non-standard County terms:

Governing Law and Venue

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The agreement will be interpreted under Delaware law and any action arising under the agreement must be venued in Delaware.

- The County's standard contract requires that it be interpreted under California law and that venue be in the San Bernardino County Superior Court.
- Potential Impact: The agreement will be interpreted under Delaware law and any lawsuit that arises must be brought in Delaware. Any questions, issues, or claims arising under the agreement will require the County to hire outside counsel competent to advise on Delaware law, which may result in fees to the County. Having venue in Delaware may result in additional expenses to the County.

Insurance

The agreement does not require GP 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 County standard insurance requirements. This means that the County has no assurance that GP will be financially responsible for claims that may arise from the County's use of the dispensers, which could result in expenses to the County. However, GP's installer TCS has agreed to the standard County insurance terms as part of the installation agreement.

Term

The term of the dispenser agreement is indefinite.

- County Policy 11-04 does not permit indefinite term or automatically renewing contracts unless approved by the Board.
- Potential Impact: There is no end term to the agreement and the County is indefinitely bound to the terms and conditions of the agreement, but the County may terminate the agreement with 30 days written notice to GP.

Attorney's Fees

The dispenser 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, Delaware 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.

Indemnification

The dispenser agreement lacks a general indemnity clause.

- 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: GP's indemnification obligation is only limited to intellectual property claims. Therefore, GP is not required to defend, indemnify or hold the County harmless from any claims arising from GP's negligent or intentional acts. If the County is sued for any such claims, the County may be solely liable for the costs of defense and damages. County Counsel cannot advise on whether and to what extent Delaware law may allow

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the County to require GP to defend or indemnify it absent an express provision in the agreement. It should be noted that TCS has agreed to the County standard general indemnity clause as part of the installation agreement.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel) on April 22, 2021; ARMC Finance (Chen Wu, Budget and Finance Officer, 580-3165) on April 23, 2021; Finance (Yael Verduzco, Administrative Analyst, 387-5285) on April 28, 2021; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on May 3, 2021.

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Record of Action of the Board of Supervisors
County of San Bernardino

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Janice Rutherford

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: May 18, 2021



cc: ARMC- Gilbert w/agree
Contractor- C/O ARMC w/agree
File- w/agree
LA 05/20/2021