

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

July 28, 2020

**FROM**

**WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center**

**SUBJECT**

Amendment to the Base Contract for Sale and Purchase of Natural Gas with Pacific Summit Energy LLC for the Provision of Natural Gas

**RECOMMENDATION(S)**

Approve **Amendment No. 2** to **Contract No. 20-600** (1646246), the Base Contract for Sale and Purchase of Natural Gas with Pacific Summit Energy LLC, to extend the contract period by one-year, for a total contract period of June 3, 2015 through July 31, 2021, and increase the contract amount by \$574,375, for a total contract amount of \$3,446,248 for the provision of natural gas. (Presenter: William L. Gilbert, Director, 580-6150)

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

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

**FINANCIAL IMPACT**

Approval of this recommendation will not result in the use of Discretionary General Funding (Net County Cost). The additional cost of \$574,375 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) 2020-21 budget.

**BACKGROUND INFORMATION**

Approval of this recommendation will allow ARMC the ability to continue the purchase of natural gas from Pacific Summit Energy LLC (Pacific Summit) for uses including but not limited to, space heating, water heating, cooking, and emergency fuel.). ARMC utilizes an energy broker to purchase natural gas in order secure lower rates by entering into a fixed rate contract with a specific energy broker. This type of contract allows ARMC to purchase natural gas at fixed cost for a specific period. If the natural gas utility provider, So Cal Gas, increase their rates, ARMC's cost will not rise. By purchasing natural gas from Pacific Summit, ARMC has saved on average of 40% on natural gas cost. The cost savings allows ARMC to operate in a fiscally-responsible and business-like manner.

Amendment No. 2 is Pacific Summit's standard commercial amendment which extends the term of the Base Contract and incorporates all of the non-standard terms that were part of the Base Contract. The non-standard County contract terms that are part of the Base Contract include the following:

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Indemnification

The County is required to indemnify and hold harmless Pacific Summit from all claims regarding personal injury (including death) or property damage caused by its natural gas after the County takes delivery of the natural gas.

- The standard County contract does not contractually obligate the County to indemnify the vendor under any circumstances.
- Potential Impact: By agreeing to indemnify Pacific Summit, 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 Pacific Summit without such limitations and the County would be responsible to defend and reimburse Pacific Summit for costs, expenses, and damages, which could exceed the total contract amount.

Limitations of Liability

Pacific Summit will not be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages.

- The County's standard contract does not include a limitation of liability provision.
- Potential Impact: The County will not be able to recover any consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages from Pacific Summit in any action brought against Pacific Summit.

Payment

Payment is due on the 25<sup>th</sup> day of the month following month of delivery of natural gas, or 10 days after receipt of invoice, whichever is later. Late payments accrue interest at a rate of the lower of the then-effective prime rate of interest published under "Money Rates" by the Wall Street Journal, plus 2% per annum, or the maximum applicable lawful interest rate.

- The standard County contract payment term is Net 60 days with no penalty for late payments.
- Potential Impact: The County may need to pay for the natural gas in a short period of time than under the standard County contract payment term, or be subject to a penalty for late payment.

Warranty

Pacific Summit disclaims any express or implied warranties, including the implied warranty of fitness for a particular purpose and merchantability.

- The standard County contract requires the vendor to fully warrant its services without any limitations.
- Potential Impact: Pacific Summit's potential liability is limited by this disclaimer of warranty, but the County may have other theories of tort liability available to it to the extent a claim is to be made against Pacific Summit.

Amendment No. 2 also corrects the party name as it relates to the County on the contract, by amending it from "Arrowhead Regional Medical Center" to "County of San Bernardino on behalf of Arrowhead Regional Medical Center."

ARMC recommends approval of this amendment, including the non-standard terms, as the purchase of natural gas from Pacific Summit provide for a significant reduction in energy costs.

**PROCUREMENT**

**Amendment to the Base Contract for Sale and Purchase of Natural Gas  
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On May 20, 2015, ARMC submitted a Request for Quotes in E-Pro under the title “ARMC-1525 Natural Gas Supplier”, for the provision of natural gas. Three vendors submitted their quotes BP North America, Constellation, and Pacific Summit. Pacific Summit was awarded based on lowest bid. On June 3, 2015, the Purchasing Department, based on this competitive process, executed a contract with Pacific Summit for a contract period of August 1, 2015 through July 31, 2018, for a contact amount of \$1,723,124.

On June 29, 2018, the Purchasing Department executed an Amendment No.1 to the contract to extend the contract period by two-years, for a total contract period August 1, 2015 through July 31, 2020, and increase the contract amount by \$1,148,749 for total contract amount of \$2,871,873.

Approval of the Amendment No. 2 to the contract will allow ARMC sufficient time to conduct a formal Request for Proposal to procure an energy broker for the provision of natural gas. Currently, the Board must approve Amendment No. 2 and not the Purchasing Department due to the non-standard terms in the Amendment and the one-year extension beyond the standard five-year contract period.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel, 387-5455) on July 8, 2020; Purchasing Department (Leo Gomez, Purchasing Manager, 387-2063) on July 8, 2020; ARMC Finance (Chen Wu, Budget and Finance Officer, 580-3165) on July 7, 2020; Finance (Yael Verduzco, Administrative Analyst, 387-5285) on July 10, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on July 13, 2020.

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

**APPROVED (CONSENT CALENDAR)**

Moved: Josie Gonzales Seconded: Robert A. Lovingood  
Ayes: Robert A. Lovingood, Janice Rutherford, Dawn Rowe, Curt Hagman, Josie Gonzales

Lynna Monell, CLERK OF THE BOARD

BY  \_\_\_\_\_  
DATED: July 28, 2020



cc: ARMC- Gilbert w/agree  
Contractor- C/O ARMC w/agree  
File- w/agree  
la 07/29/2020