

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

June 11, 2024

**FROM**

**ANDREW GOLDFRACH, ARMC Chief Executive Officer, Arrowhead Regional Medical Center**

**SUBJECT**

Service Agreement with Alcon Vision, LLC, for Ophthalmologic System Maintenance

**RECOMMENDATION(S)**

Approve a **Service Agreement No. 24-470**, including non-standard terms, with Alcon Vision, LLC, for ongoing maintenance and service of ophthalmologic systems in the amount of \$30,870, for the period of June 11, 2024 through June 10, 2027.

(Presenter: Andrew Goldfrach, ARMC Chief Executive Officer, 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 cost of \$30,870 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) 2023-24 budget and will be included in future recommended budgets.

**BACKGROUND INFORMATION**

The recommended Service Agreement (Agreement) with Alcon Vision, LLC (Alcon) will provide ARMC ongoing maintenance services for two ophthalmologic systems currently used at the hospital. Specifically, this Agreement provides for the maintenance of Alcon's Centurion Vision system and ORA system. These systems are used by physicians when performing eye related procedures such as cataract and retina surgeries. The Agreement will ensure that the equipment is in good operating condition and can continue to provide for the health, safety and social service needs of county residents.

The Agreement with Alcon is its standard non-negotiable service agreement, which contains terms that differ from the standard County contract terms. The non-standard terms include the following:

1. Payment is due within 30 days of the date of invoice. In the event that payment is overdue and Alcon refers the matter to a collection agency or initiates legal action, Alcon would be able to assess a late penalty charge of 1.5% per month.

**Service Agreement with Alcon Vision, LLC, for Ophthalmologic System  
Maintenance  
June 11, 2024**

- County standard contract terms indicate processing time is 60 days with no late payment penalty.
  - Potential Impact: County standard processing time is 60 days or more. Failing to pay within 30 days will result in a material breach of the Agreement, which would allow Alcon to terminate the Agreement and seek other legal remedies, including charging the County interest at the rate of the lesser of 1.5% per month.
2. Either party may terminate the Agreement with at least 60 days written notice and if the County terminates the Agreement, there will be a cancellation fee for each affected system.
- The County standard contract provides that either party may terminate the contract with 30 days' notice without any cancellation penalties.
  - Potential Impact: If the County terminates the Agreement prior to its expiration, the County would be required to pay a cancellation fee.
3. Alcon is required to maintain general liability insurance but is not required to meet any of the County standard insurance requirements.
- The County's standard contract requires contractors to carry certain insurance coverage as determined by the County's Department of Risk Management, and for contractors to add the County as an insured in their policies and to waive the right to subrogation.
  - Potential Impact: The Agreement does not include County standard insurance requirements. This means that the County has no assurance that Alcon will be financially responsible for claims that may arise from the services provided, which could result in expenses to the County that exceed the total Agreement amount. No waiver of subrogation may allow Alcon's insurers, if any, to bring suit against the County. Not being added as an insured to Alcon's insurance policies mean that the County cannot directly turn to Alcon's insurers in pursuing a claim.
4. Alcon is permitted to assign or subcontract its obligations under the Agreement without the County's consent.
- The County's standard contract requires contractors to obtain the consent of the County prior to assigning a contract.
  - Potential Impact: Alcon may assign the Agreement to a third-party without the County's consent. This could allow the work to be assigned to a business with which the County is legally prohibited from doing business with due to issues of federal debarment or suspension and conflict of interest.
5. Alcon caps its liability to the County at the total amounts paid or payable during the 12 months preceding the date such liability was incurred.
- The standard County contract contains no limitations of liability.
  - Potential Impact: Alcon caps its liability as discussed above. Claims could exceed the liability cap and the Agreement amount leaving the County financially liable for the excess.
6. There is no stated venue in the Agreement.
- County Policy 11-05 requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
  - Potential Impact: Alcon is located in Delaware. Having no express venue in the Agreement means that Delaware venue could be applied to disputes arising under

**Service Agreement with Alcon Vision, LLC, for Ophthalmologic System  
Maintenance  
June 11, 2024**

this Agreement, which may result in additional expenses that exceed the amount of the Agreement.

7. The Agreement terms do not require Alcon to indemnify the County.
  - The standard County contract requires contractors to defend and indemnify the County from third-party claims arising out of the acts, errors or omissions of any person.
  - Potential Impact: Alcon is not contractually required to defend or indemnify the County from any claims, including from claims arising out of Alcon's negligent or intentional acts. If the County is sued for any claim based on Alcon's conduct, the County may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount.

ARMC recommends approval of this Agreement with Alcon, including non-standard terms, as it will enable ARMC to cost-effectively maintain ophthalmologic equipment used to treat patients throughout the county.

**PROCUREMENT**

Purchasing supports this non-competitive procurement based on specialized credentials, training, and expertise. Ongoing maintenance and servicing of Alcon systems and equipment is required to be provided by Alcon.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Charles Phan, Supervising Deputy County Counsel, 387-5455) on April 9, 2024; Purchasing (Veronica Pedace, Buyer III, 387-2464) on April 12, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst II, 386-9008) on April 16, 2024; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on May 17, 2024; Finance (Jenny Yang, Administrative Analyst, 387-4884) on May 21, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on May 22, 2024.

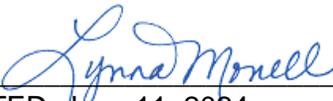
**Service Agreement with Alcon Vision, LLC, for Ophthalmologic System  
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Record of Action of the Board of Supervisors  
San Bernardino County

**APPROVED (CONSENT 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: June 11, 2024



cc: ARMC - Goldfrach w/agree  
Contractor - c/o ARMC w/agree  
File - w/agree  
CCM 06/26/2024