

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

**September 24, 2024**

**FROM**

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

**SUBJECT**

Agreement with AtriCure, LLC for the Purchase of Specialized Disposal Arterial Fibrillation Products

**RECOMMENDATION(S)**

Approve **Agreement No. 24-918**, including non-standard terms, with AtriCure, LLC to purchase proprietary specialized disposable arterial fibrillation products used during open heart surgery in the not-to-exceed amount of \$50,000, for the period of September 24, 2024 through September 23, 2026.

(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 \$50,000 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) 2024-25 budget and will be included in future recommended budgets.

**BACKGROUND INFORMATION**

Approval of the Agreement with AtriCure, LLC (AtriCure) will allow ARMC to purchase proprietary specialized disposable arterial fibrillation products for use in patients during open heart surgery.

These are the only approved disposable products that can be used with AtriCure's equipment for the Open-Heart Surgery Program, which was launched in April 2022. A few examples of the proprietary disposable arterial fibrillation products are the Isolator Long Synergy Clamp, the AtriClip Flex Device, and the AtriClip PRO2 Device, which all aid in performing open heart surgery. At the initial launch, many of the products were purchased in bulk for cost savings. As the program enters its third year, ARMC has established minimum inventory thresholds. This Agreement will allow ARMC to purchase replacement items as they are utilized during surgeries, keeping inventory at a reasonable level for a Trauma I facility.

**Agreement with AtriCure, LLC for the Purchase of Specialized Disposal  
Arterial Fibrillation Products  
September 24, 2024**

The Agreement is based on AtriCure's standard commercial agreement, negotiated by the parties, that include non-standard contract terms and omit the standard County contract terms as follows:

1. Payment terms are Net 45 days of date of invoice.
  - The standard County contract payment term is Net 60 days with no penalty for late payments.
  - Potential Impact: County standard processing time is 60 days or more. Failing to pay within 45 days of the date of invoice may result in a material breach of the Agreement, which could allow AtriCure to terminate the Agreement and seek other legal remedies.
2. Except for claims based on indemnification, gross negligence, willful misconduct, or violations of law, AtriCure limits its liability to the greater of (1) the limits of its insurance policy as required by the Agreement or (2) the price paid for the products under the Agreement.
  - The County standard contract does not include a limitation of liability.
  - Potential Impact: Claims could exceed the liability cap and the Agreement amount leaving the County financially liable for the excess.
3. AtriCure limits its general indemnity obligation to claims that arise from its negligence or intentional acts and defects in its products, except to the extent the claim arises out of (1) the County or a third-party's negligence, recklessness, or intentional misconduct that proximately causes the injuries, (2) the failure to use the products in accordance with the written instructions, (3) abuse/misuse of the product, or (4) alteration or contamination of the products.
  - The County standard contract general indemnity provision requires the contractor to indemnify, defend, and hold the County harmless from third party claims arising out of the acts, errors or omissions of any person.
  - Potential Impact: AtriCure's indemnity obligation is more limited compared to the standard County general indemnity obligation. In the event a claim arises that falls outside the scope of AtriCure's limited indemnity obligation, the County could be financially responsible for the defense of the claim and any resulting judgment/settlement.
4. While AtriCure is required to maintain insurance policies within the County's required policy limits, it is not required to comply with any other standard County insurance requirements.
  - 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: Without all of the standard insurance provisions, the County has no reinsurance that AtriCure will maintain adequate and sufficient insurance to provide coverage to the County in the event of a claim. Insufficient coverage could result in expenses that exceed the total contract amount, leaving the County financially liable for the claims.
5. Venue is in the state or federal courts of California.
  - The standard County contract requires venue to be in the San Bernardino County Superior Court, San Bernardino District.

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Arterial Fibrillation Products  
September 24, 2024**

- Potential Impact: In the event of a dispute, AtriCure may attempt to file a lawsuit in a county in California other than San Bernardino County. In the event that occurs, the County may incur fees and expenses it might not otherwise have incurred in defending the lawsuit if the lawsuit was brought in San Bernardino County.

ARMC recommends approval of this Agreement, including the non-standard terms, to provide the safety, health and social service needs of County residents by making these specialized disposable products available for surgical use during open heart surgery, protecting the patient with special needs from further heart damage, and are ultimately integral for positive outcomes for the patient.

**PROCUREMENT**

Purchasing supports this non-competitive procurement based on the proprietary nature of the products. These are propriety products unique unto this company and are not available on the open market.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Charles Phan, Supervising Deputy County Counsel, 387-5455) on August 22, 2024; Purchasing (Veronica Pedace, Buyer III, 387-2464) on August 28, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst, 386-9008) on August 29, 2024; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on August 29, 2024; Finance (Jenny Yang, Administrative Analyst, 387-4884) on August 30, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on September 9, 2024.

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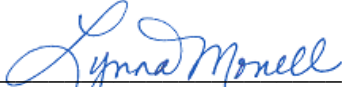
Record of Action of the Board of Supervisors  
San Bernardino County

**APPROVED (CONSENT CALENDAR)**

Moved: Curt Hagman   Seconded: Joe Baca, Jr.  
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Curt Hagman, Joe Baca, Jr.  
Absent: Dawn Rowe

Lynna Monell, CLERK OF THE BOARD

BY



DATED: September 24, 2024



cc:     ARMC - Goldfrach w/agree  
         Contractor - c/o ARMC w/agree  
         File - w/agree  
CCM   09/26/2024