

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

June 18, 2025

FROM

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

SUBJECT

Agreements with Flex Financial and Stryker Sales, LLC for Lease and Service of Endoscopy Video Equipment

RECOMMENDATION(S)

1. Approve **Master Lease Agreement No. 25-441**, including non-standard terms, with Flex Financial, a division of Stryker Sales LLC for the lease of endoscopy video equipment in an amount not to exceed \$3,648,864, plus applicable taxes, for a five-year period effective upon delivery of equipment.
 2. Approve **Service Agreement No. 25-442**, including non-standard terms, with Stryker Sales, LLC for service of endoscopy video equipment in the amount of \$1,795,489, plus applicable taxes, for a five-year period effective upon delivery of equipment.
- (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 \$5,444,353, plus applicable taxes 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) 2025-26 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

Approval of Master Lease Agreement (Lease) with Flex Financial, a division of Stryker Sales, LLC (collectively with Stryker Sales, LLC, "Stryker") will allow ARMC to use the latest technology in endoscopy video equipment in order for surgeons to continue to perform minimally invasive surgical procedures, which provides for the health and social services needs of County residents. These agreements provide for periodic updates and replacement of the video equipment without an increase in cost.

The approval of the Service Agreement (Agreement) with Stryker provides for the labor, parts and materials to maintain the endoscopy video equipment devices in good operating order, consistent with the manufacturer's requirements. The service agreement also provides for

Agreements with Flex Financial and Stryker Sales, LLC for Lease and Service of Endoscopy Video Equipment
June 18, 2025

ongoing timely repairs by providing loaner equipment while repairs are completed; and includes 24-hour technical support, onsite training, utilization review, and support to assist with reduction of repair costs which allows ARMC to operate in a fiscally-responsible and business-like manner.

The Lease is Stryker's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. While the parties negotiated certain contract terms to County standards, Stryker would not agree to all County standard terms. The non-standard and missing terms include the following:

1. Stryker may assign the Lease without notice to the County and without the County's approval.
 - The County standard contract requires that the County must approve any assignment of the contract.
 - Potential Impact: Stryker could assign the Lease to a third party or business with which the County is legally prohibited from doing business due to issues of conflict of interest without the County's knowledge. Should this occur, the County could be out of compliance with the law until it becomes aware of the assignment and terminates the Lease.
2. The Lease does not require Stryker to indemnify the County, as required by County Policies 11-05 and 11-07, including for intellectual property infringement claims.
 - The County standard contract 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. The 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.
 - Potential Impact: Stryker is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from Stryker's negligent or intentional acts and intellectual property infringement. If the County is sued for any claim, including intellectual property infringement, based on its use of Stryker's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total Lease amount.
3. The Lease does not require Stryker to meet the County's insurance standards as required pursuant to County Policies 11-05, 11-07 and 11-07SP.
 - County policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and as set forth in County policy and in the County standard contract.
 - Potential Impact: The County has no assurance that Stryker will be financially responsible for claims that may arise under the Lease, which could result in expenses to the County that exceed the total Lease amount.
4. Payment terms are monthly, with late payment interest of 2% for each payment or \$10.00, whichever is greater.
 - County standard payment terms are Net 60 days with no interest or late payment penalties.

Agreements with Flex Financial and Stryker Sales, LLC for Lease and Service of Endoscopy Video Equipment
June 18, 2025

- Potential Impact: County standard processing time is 60 days or more. Failing to pay on the due date may result in a material breach of the Lease, which could allow Stryker to terminate the Lease and seek other legal remedies, including charging the County interest at a rate of the greater of 2% or \$10, which could exceed the Lease amount.
5. The County may not terminate the Lease for convenience. The County may only terminate the Lease at the end of a fiscal year if sufficient funds are not appropriated for the next fiscal year.
- County Policy 11-05 requires that the County have the right to terminate the contract, for any reason, with a 30-day written notice of termination without any obligation other than to pay amounts for services rendered and expenses reasonably incurred prior to the effective date of termination.
 - Potential Impact: The County can only terminate the Lease during the term for non-appropriation of funds. Any attempted termination by County without cause could result in payment liability for the full Lease amount and allow Stryker to seek other legal remedies, which could exceed the total contract amount.
6. There is no stated venue in the Lease.
- County Policy 11-05 requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: Stryker is located in Kalamazoo County, Michigan. Having no express venue in the Lease means that Kalamazoo County, Michigan venue could be applied to disputes arising under this Lease, which may result in additional expenses that exceed the amount of the Lease.

The Agreement is Stryker's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. While the parties negotiated certain contract terms to County standards, Stryker would not agree to all County standard terms. The non-standard and missing terms include the following:

1. Stryker limits its indemnification obligations to liability arising from its gross negligence or willful misconduct, excluding: (1) claims prohibited by law; (2) arising from the negligence of any person other than a Stryker employee; (3) the failure of any person other than Stryker's employee to follow instructions for use of the equipment; (4) the use of any equipment or part not purchased from Stryker; (5) modification of any party other than a Stryker employee; (6) or actions of any Stryker employee while under the direction or control of County staff.
 - The County standard contract 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: The limit of the Stryker's indemnification obligation means that any claim that meets the limiting conditions or is not affected by these conditions are excluded from Stryker's indemnification obligations.
2. The Agreement does not include certain standard County insurance requirements, including the waiver of subrogation.
 - The County standard contract requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.

Agreements with Flex Financial and Stryker Sales, LLC for Lease and Service of Endoscopy Video Equipment
June 18, 2025

- Potential Impact: No waiver of subrogation may allow Stryker's insurer to bring suit against the County, which could result in expenses that exceed the total Agreement amount.
3. Stryker's maximum liability to the County is limited to \$500,000, excluding Stryker's indemnity obligations.
 - 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.
 4. 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: Stryker is located in Santa Clara County, California. Having no express venue in the Agreement means that Santa Clara County, California venue could be applied to disputes arising under this Agreement, which may result in additional expenses that exceed the amount of the Agreement.

ARMC recommends approval of agreements with Stryker, including the non-standard terms, as it will enable the hospital to provide for the safety, health and social services needs of County residents.

PROCUREMENT

The Purchasing Department supports this non-competitive procurement based on equipment/system compatibility and specialized credentials/expertise/training. The endoscopy video equipment is compatible with the equipment ARMC currently uses. In order to be consistent with the manufacturer's requirements, Stryker must maintain and service the equipment.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on May 23, 2025; Risk Management (Gregory Ustaszewski, Staff Analyst II, 386-9008) on April 7, 2025; Purchasing (Veronica Pedace, Buyer III, 387-2464) on May 27, 2025; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on May 27, 2025; Finance (Jenny Yang, Administrative Analyst, 387-4884) on May 30, 2025; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on June 2, 2025.

**Agreements with Flex Financial and Stryker Sales, LLC for Lease and
Service of Endoscopy Video Equipment
June 18, 2025**

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, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: June 18, 2025



cc: ARMC - Goldfrach w/agrees
Contractor - c/o ARMC w/agree
File - w/agree
CCM 06/25/2025