



# San Bernardino County

## Legislation Text

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**File #: 5089, Agenda Item #: 11**

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

**November 16, 2021**

#### **FROM**

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

#### **SUBJECT**

Agreement with Advanced Sterilization Products Services, Inc. for Preventative Maintenance of Sterrad Sterilizers

#### **RECOMMENDATION(S)**

Approve Agreement with Advanced Sterilization Products Services, Inc. in the amount of \$40,546, for preventative and maintenance services of Sterrad Sterilizers, for the period of December 15, 2021 through December 14, 2022.

(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 this item will not result in the use of Discretionary General Funding (Net County Cost). The cost of \$40,546 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) 2021-22 budget and will be included in the 2022-23 recommended budget.

#### **BACKGROUND INFORMATION**

Approval of this Agreement will allow ARMC to obtain preventative maintenance and service of ARMC's three Sterrad Sterilizers. The sterilizers use low-temperature, hydrogen peroxide gas plasma technology to sanitize a wide range of instruments efficiently and effectively. ARMC's Sterile Processing Department manages and operates the sterilizers to clean and return the equipment to the operating rooms and other departments for patient care. Advanced Sterilization Products Services, Inc. (Advanced Sterilization) is a current County vendor and has provided these services to ARMC for the last year under Contract No. 20-1162. On December 8, 2020 (Item No. 10), the Board of Supervisors approved Contract No. 20-1162 with Advanced Sterilization for preventative maintenance of Sterrad Sterilizers in the amount of \$40,546 for the period of December 15, 2020 through December 14, 2021.

The Agreement is Advanced Sterilization's standard commercial agreement, negotiated by the parties, that includes the following non-standard contract terms:

1. The County must pay invoices within 30 days from the date of invoice.
  - The County's standard payment term is Net 60 days.
  - Potential Impact: The County will have fewer days to pay the invoices and must be mindful of this, though there is no penalty for late payments of invoices.
2. Neither party will be liable to the other for special, indirect, incidental, punitive, or consequential damages arising from any failure or matter arising under the Agreement, and except for any indemnification claims or claims arising out of personal injury, the Advanced Sterilization limits its liability to \$202,730.
  - The County's standard contract contains no limitations on the contractor's liability.
  - Potential Impact: The County is waiving any right to recover any damages for special, indirect, incidental, punitive, or consequential damages in a claim brought against Advanced Sterilization. Additionally, except for indemnification and personal injury claims, the contractor caps its liability at \$202,730, meaning that the County would be financially liable for any amounts in excess of the cap.
3. The Agreement is governed under Delaware law.
  - The standard County contract requires California governing law.
  - Potential Impact: The Agreement will be interpreted under Delaware law. Any questions, issues or claims arising under this Agreement would require the County to hire outside counsel licensed and competent to advise on Delaware law, which may result in fees that exceed the total contract amount.
4. There is no stated venue in the Agreement.
  - The standard County contract requires venue to be the San Bernardino County Superior Court, San Bernardino District.
  - Potential Impact: Having no express venue in the Agreement means that Delaware venue could be applied to this Agreement, which may result in additional expenses that exceed the total contract amount.
5. Advanced Sterilization is contractually obligated to indemnify the County only for claims for bodily injury to the extent the claims arise out of the services provided, but will not indemnify the County where the claim arises from the County's negligence or willful misconduct, misuse of a product, or breach of the Agreement by the County.
  - The standard County contract requires the vendor to defend and indemnify the County for any claims arising out of the contract regardless of the cause, except where the claim is due to the County's sole negligence or willful misconduct.
  - Potential Impact: The indemnification provision in this Agreement is much more limited than the County's standard indemnification clause, meaning that there are fewer circumstances under which Advanced Sterilization is contractually obligated to indemnify the County. For any claims that fall outside the scope of this limited indemnification, the County would potentially be liable for defending and paying such claims, which could exceed the total contract amount.

ARMC recommends approval of this Agreement, including the non-standard terms, as the services performed by Advanced Sterilization assist ARMC in providing for the safety, health and social service needs of County residents.

## **PROCUREMENT**

This is a non-competitive procurement supported by Purchasing as only Advanced Sterilization's technicians, who are credentialed by the manufacturer of the Sterrad Sterilizers, are authorized to perform maintenance and service on the sterilizers.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel, 387-5455) on October 13, 2021; Purchasing Department (Michelle Churchill, Supervising Buyer, 387-2070) on October 13, 2021; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on October 14, 2021; Finance (Yael Verduzco, Administrative Analyst, 387-5285) on October 27, 2021; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-5423) on October 29, 2021.