

COUNTY OF MONTEREY STANDARD AGREEMENT

This Agreement is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:

Clear Labs, Inc.

(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION:

The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide:

1. CL-Assurance One Plans, an Annual Preventative Maintenance Agreement for the Clear Dx platform, for a total of three years.
2. CL-WGS Reagent kits used for SARS-CoV-2 genome sequencing.

2.0 PAYMENT PROVISIONS:

County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of: \$442,483.91

3.0 TERM OF AGREEMENT:

3.01 The term of this Agreement is from upon execution to March 31, 2025, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.

3.02 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS:

The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A Scope of Services/Payment Provisions

Exhibit B Other: Other/Addendum

5.0 PERFORMANCE STANDARDS:

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 PAYMENT CONDITIONS:

- 6.01 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided in this paragraph. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION:

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

- 7.02 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.
- 7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION:

CONTRACTOR shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

9.0 INSURANCE REQUIREMENTS:

- 9.01 **Evidence of Coverage:** Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

- 9.02 **Qualifying Insurers:** All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

9.03 **Insurance Coverage Requirements:** Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance: including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Requestor must check the appropriate Automobile Insurance Threshold:

Requestor must check the appropriate box.

Agreement Under \$100,000 Business Automobile Liability Insurance: covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

Agreement Over \$100,000 Business Automobile Liability Insurance: covering all motor vehicles, including ~~owned, leased~~, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit or Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Workers' Compensation Insurance: if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Professional Liability Insurance: if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail

DS
PP
Contractor

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EMJ
County

coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

(Note: any proposed modifications to these insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Other Requirements:

- 9.04 All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 2010 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or

approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect. CONTRACTOR shall always during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of

this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10.0 RECORDS AND CONFIDENTIALITY:

- 10.1 **Confidentiality:** CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.
- 10.2 **County Records:** When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.3 **Maintenance of Records:** CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three-year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.4 **Access to and Audit of Records:** The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.5 **Royalties and Inventions:** County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11.0 NON-DISCRIMINATION:

- 11.1 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sexual orientation, or any other characteristic set forth in California Government code § 12940(a), either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and

treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS:

If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee. CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 COMPLIANCE WITH APPLICABLE LAWS:

13.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state, and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this AGREEMENT as well as any privacy laws including, if applicable, HIPAA. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices require by law in the performance of the Services.

13.2 CONTRACTOR shall report immediately to County's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.

13.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations, and guidelines that are in force at the time such documentation is prepared.

14.0 INDEPENDENT CONTRACTOR:

In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is always acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

15.0 NOTICES:

Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
Edward L. Moreno, MD, MPH, Health Officer and Director of Public Health Bureau <hr/> Name and Title	Jeff A. Field Chief Commercial Officer <hr/> Name and Title
County of Monterey Health Department 1270 Natividad Road, Salinas, CA 93906 <hr/> Address	1559 Industrial Road San Carlos, CA 94070 <hr/> Address
831-755-4585 <hr/> Phone:	(407)718-1273; jeff.field@clearlabs.com <hr/> Phone:

16.0 MISCELLANEOUS PROVISIONS.

- 16.01 **Conflict of Interest:** CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.
- 16.02 **Amendment:** This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 16.03 **Waiver:** Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 16.04 **Contractor:** The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 16.05 **Disputes:** CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 16.06 **Assignment and Subcontracting:** The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

- 16.07 **Successors and Assigns:** This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 16.08 **Headings:** The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 16.09 **Time is of the Essence:** Time is of the essence in each and all of the provisions of this Agreement.
- 16.10 **Governing Law:** This Agreement shall be governed by and interpreted under the laws of the State of California; venue shall be Monterey County.
- 16.11 **Non-exclusive Agreement:** This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 16.12 **Construction of Agreement:** The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 16.13 **Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 16.14 **Authority:** Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 16.15 **Integration:** This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 16.16 **Interpretation of Conflicting Provisions:** In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

17.0 **CONSENT TO USE OF ELECTRONIC SIGNATURES.**

- 17.1 The parties to this Agreement consent to the use of electronic signatures via DocuSign to execute this Agreement. The parties understand and agree that the legality of electronic signatures is governed by state and federal law, 15 U.S.C. Section 7001 et seq.; California Government Code Section 16.5; and, California Civil Code Section 1633.1 et. seq. Pursuant to said state and federal law as may be amended from time to time, the parties to this Agreement hereby authenticate and execute this Agreement, and any and all Exhibits to this

Agreement, with their respective electronic signatures, including any and all scanned signatures in portable document format (PDF).

17.2 Counterparts.

The parties to this Agreement understand and agree that this Agreement can be executed in two (2) or more counterparts and transmitted electronically via facsimile transmission or by delivery of a scanned counterpart in portable document format (PDF) via email transmittal.

17.3 Form: Delivery by E-Mail or Facsimile.

Executed counterparts of this Agreement may be delivered by facsimile transmission or by delivery of a scanned counterpart in portable document format (PDF) by e-mail transmittal, in either case with delivery confirmed. On such confirmed delivery, the signatures in the facsimile or PDF data file shall be deemed to have the same force and effect as if the manually signed counterpart or counterparts had been delivered to the other party in person.

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18.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

By: _____
Contracts/Purchasing Officer

Date: _____

By: DocuSigned by:
Elsa Mendoza Jimenez
C7A30BA59CA8423
Department Head (if applicable)

Date: 5/17/2022 | 9:00 AM PDT

Approved as to Form
Office of the County Counsel
Leslie J. Girard, County Counsel

By: DocuSigned by:
Mairee Pantle
County Counsel

Date: 4/5/2022 | 1:05 PM PDT

Approved as to Fiscal Provisions

By: DocuSigned by:
Burcu Mousa
Auditor/Controller

Date: 4/6/2022 | 1:29 PM PDT

Approved as to Liability Provisions
Office of the County Counsel-Risk Manager
Leslie J. Girard, County Counsel-Risk Manager

By: DocuSigned by:
Danielle Mancuso
Risk Management

Date: 4/6/2022 | 3:39 PM PDT

CONTRACTOR

Clear Labs, LLC
Contractor/Business Name *

By: DocuSigned by:
Sasan Amini
253171970692125
(Signature of Chair, President, or Vice-President)

Sasan Amini, CEO

Date: 3/18/2022 | 1:35 PM PDT
Name and Title

By: DocuSigned by:
Jeff Field
814856726E8414
(Signature of Secretary, Asst. Secretary, CFO, Treasurer, or Asst. Treasurer)

Jeff Field, Chief Commercial Officer

Date: 3/22/2022 | 7:45 AM PDT
Name and Title

County Board of Supervisors' Agreement No. _____ approved on _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

¹ Approval by County Counsel is required

² Approval by Auditor-Controller is required

³ Approval by Risk Management is necessary only if changes are made in paragraphs 8 or 9

Addendum to the County of Monterey, CA Standard Agreement

The County of Monterey, CA (“**County**”) and Clear Labs, Inc. (“**Contractor**”) agree to addend the County’s Standard Agreement (“**Agreement**”) as follows which are added to, incorporated into and govern any conflict with the Agreement except to the extent prescribed by law:

1. Section 5, Performance Standards: The following provisions are added to Section 5 of the Agreement:

The Clear Labs Dx Instrument (“**Instrument**”) will perform materially in conformity with the specifications contained in the Documentation when used in accordance with the Agreement and Documentation. Contractor will remedy reproducible errors or failures in the Instrument in accordance with its then current support and maintenance program. Except as expressly stated, the Instrument is not error free and is provided on an as-is basis, without any warranties, implied or express, including but not limited to the implied warranties of fitness for a particular purpose, merchantability or quality. Contractor will use commercially reasonable efforts to provide onsite support within 24 hours of receiving notification from the County of a reproducible defect which has rendered the Instrument incapable of producing the output/results in accordance with the Documentation when used in accordance with the Agreement and Documentation. Contractor may substitute, replace or discontinue any or all components of the Instrument at any time and will notify the County in advance of any such events. In any event where the Instrument is down for more than 48 consecutive business hours, Contractor will provide the County the option of sending samples to a Contractor facility for processing. This service, including shipping charges, will be provided at no additional charge as part of the Contractor support and maintenance program. Any damage to the Instrument by operator misuse, neglect, or other inappropriate interaction with the Instrument are not covered by the Support and Maintenance Agreement and may result in additional charges at applicable T&M rates. “**Documentation**” means the applicable user and technical documentation Contractor makes available to the County for use in conjunction with the software and Instrument.

2. Section 7, Termination. County waives termination for convenience. Notwithstanding any provision to the contrary in the Agreement, Section 16.09 is deleted and County agrees to notify Contractor promptly of any breach of the Agreement and will allow Contractor up to 30 days to cure such breach before seeking to terminate the Agreement.

3. Section 8, Indemnification and Limitation of Liability. Section 8 is deleted and replaced with the following:

Contractor will defend or settle third party claims or causes of action against the County and indemnify and pay damages finally awarded or paid in settlement (including reasonable attorneys’ fees and costs) to the extent such claim or cause of action alleges the Instrument, as delivered and used in accordance with the Agreement and Documentation, infringes, misappropriates or violates a third party’s intellectual property right if the County promptly notifies the Contractor, grants Contractor sole control of the disposition or settlement of such claims or causes of action and cooperates with Contractor in the disposition of such claims or causes of action. In addition to its indemnity obligations, Contractor will, if it appears use of the Instrument will be or use of the Instrument is enjoined to: (a) obtain a license for continued use; (b) modify or substitute the Instrument (or component(s) thereof) so as to not infringe or, if (a) or (b) are not commercially feasible, will terminate the Agreement and, once County stops using Instrument and returns the Instrument in accordance with Contractor’s instructions, Contractor will refund pre-paid amounts on a 3 year straight line basis. The foregoing states Contractor’s sole obligation and County’s sole remedy

of infringement, violation or misappropriation of a third party's intellectual property.

Notwithstanding any provision to the contrary in the Agreement or this Addendum, the parties disclaim indirect, special, incidental, consequential, exemplary and cover damages, damages pertaining to lost, corrupt or damaged data, lost revenue, goodwill and profits and, in no event will Contractor, its licensors, suppliers or lessors, be liable for more than the amounts paid or payable by the County to the Contractor in the 12 months immediately preceding the date on which the cause of action arose.

4. Software and Documentation: Section 10.5, Royalties and Inventions, is deleted and replaced with the following:

Contractor grants the County, under its or its suppliers, lessors and licensors' intellectual property rights, the limited, non-exclusive, non-transferable and non-sublicensable right use the software and Documentation provided with the Instrument for its internal business purposes in conjunction with the Instrument in accordance with the Documentation. Contractor, its suppliers, lessors and licensors, reserve all rights not expressly granted. County will not and will not permit any third party to: (a) use the Instrument except as expressly permitted by this Agreement; (b) reverse engineer disassemble, decompile or otherwise attempt to derive the composition of the Instrument (except to the extent applicable laws specifically prohibit such restrictions; or, (c) remove or alter any proprietary notices or labels on the software, Instrument, Documentation, Consumables and Reagent Kits.

5. Section 16.15, Integration, is modified to include the following link as the Agreement includes the terms posted and accepted: <https://app.clearlabs.com//legal/eula>.

6. The following provisions are added to the Agreement:

6.1 Data: The County grants Contractor, its suppliers, lessors and licensors the perpetual, irrevocable right to access and use all data used in conjunction with the Instrument for purposes of providing service to the County ("**Customer Data**") and to use fully anonymized and depersonalized data that cannot be distinguished, identified or attributed to the County or any given County or individual on an as-is basis, without any warranty, implied or express. Contractor and its licensors retain ownership of the software, Documentation, all data including, by way of example and not limitation, data generated by or through the use of the Instrument pertaining to the functioning of the Instrument (excluding Customer Data), all copies, upgrades, updates and derivatives thereof, the results and feedback relating thereto, all know-how and intellectual property rights therein.

6.2 Reagents, Consumables, Flow Cells: The Instrument is designed to operate only with the Contractor's Consumables, Reagent Kits and Flow Cells. All claims, performance parameters, warranties and licenses are only valid when the Instrument is operated with the Contractor's Consumables, Reagent Kits and Flow Cells. Contractor does not accept returns or offer refunds for expired Reagent Kits purchased by County. County will return to Contractors, using the prepaid packaging provided by Contractor, the Flow Cells as soon as reasonably possible. Customer will not return Flow Cells which are out of date or otherwise exposed to Biohazard Level 3 or higher and will dispose of such Flow Cells in accordance with applicable law and regulations.

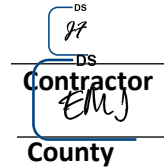
6.3 Return of Flow Cells. The County will return to Contractor, using the prepaid packaging provided by Contractor, the Flow Cells as soon as reasonably possible, except that County will not return contaminated Flow Cells to Contractor, and instead shall provide Contractor proof of legal and appropriate destruction of Contaminated Flow Cells. Additionally, County will, upon termination of its

agreement with Contractor, if requested by Contractor, return to Contractor, using the prepaid packaging provided by Contractor, Flow Cells which remain in Customer’s possession or the possession of a third party at the time of such termination (except Contaminated Flow Cells). Contractor reserves the right to recover from the County monetary compensation for any Flow Cells not returned or for which proof of legal and appropriate destruction of Contaminated Flow Cells has not been provided to Contractor.

6.4. Government Rights. The following provisions are added to the Agreement: Contractor licenses its software and documentation to users within the United Countys government and any contractor thereof only under the Agreement of Contractor’s standard licensing agreement for commercial end use as “commercial computer software” and related documentation in accordance with the Agreement of the party’s standard software license agreement, as specified in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors.

7. Except as expressly stated, the Agreement remains in full force and effect.

AGREED TO THIS March, 2022
day of ~~December, 2021~~

 DS
DS
Contractor
EMJ
County

The County of Monterey, CA

Clear Labs, Inc.

DocuSigned by:
Elsa Mendoza Jimenez
By: _____
C7A30BA59CA8423...

DocuSigned by:
Jeff Field
By: _____
B14850F226F8414...

Print Name: Elsa Jimenez

Print Name: Jeff Field

Title: Director of Health

Title: Chief Commercial Officer

DocuSigned by:
Mairin Pantle
By: _____
63EE9F1302BD412...

Deputy County Counsel

4/8/2022 | 11:49 AM PDT

Date

DocuSigned by:
Joey Nolasco
By: _____
F60C442ED05B437...

Auditor/Controller

4/13/2022 | 11:33 AM PDT

Date

EXHIBIT-A

To Agreement by and between

County of Monterey Health Department, hereinafter referred to as “County”

AND

Clear Labs, Inc., hereinafter referred to as “CONTRACTOR”

Scope of Services / Payment Provisions

A. SCOPE OF SERVICES

A.1 CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

Provide

1. Clear Labs preventative maintenance agreement (PMA) for the Clear Dx Instrument. The Clear Labs Dx Instrument is used to perform SARS-CoV-2 genome sequencing. The PMA will be for 3 years, which will result in a 10% discount.
2. CL-WGS Reagent kits used for SARS-CoV-2 genome sequencing. The cost per kit (for 32 tests per run) is \$3,488.00 and includes reagents/consumables and technology access fee. The lab is requesting 104 CL-WGS Reagent Kits. A refresh shipment will occur at an agree upon interval (20kits per shipment), so that stock is always maintained.

B. PAYMENT PROVISIONS

B.1 COMPENSATION/ PAYMENT

County shall pay an amount not to exceed \$442,483.91 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

Public Health Laborabory - Clear Labs, Inc.				
Supplies and Preventative Maintencane Agreement				
Qty.	Description	Cost	Additional Costs/Disco unts	Total
3	CL-Assurance One Plans, an annual preventative maintenance plan agreement (PMA) for the Clear Dx platform, for a total of three years coverage	\$ 14,988.00	\$(4,496.40)	\$ 40,467.60
104	Clear Dx tm WGS SARS-CoV-2 Reagents/Consumables (WGS Mode) – 32 tests per run Reagents/Consumables Fee \$2,441.60 Technology Access Fee <u>\$1,046.40</u> TOTAL Cost per Run* \$3,488.00	\$ 3,488.00	\$ -	\$ 362,752.00
6	Reagent shipping and handling	\$ 300.00	\$ -	\$ 1,800.00
		Subtotal		\$ 405,019.60
			Tax rate	9.25%
			Tax	\$ 37,464.31
			Grand total	\$ 442,483.91

There shall be no travel reimbursement allowed during this Agreement.

CONTRACTOR warrants that the cost charged for services under the terms of this contract are not in excess of those charged any other client for the same services performed by the same individuals.

B.2 CONTRACTORS BILLING PROCEDURES

NOTE: Payment may be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the Agreement, payment at conclusion of the Agreement, etc.

County may, in its sole discretion, terminate the contract or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.

County shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were completed.

DISALLOWED COSTS: CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.



Monterey County Board of Supervisors

Board Order

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066
www.co.monterey.ca.us

A motion was made by Supervisor Luis A. Alejo, seconded by Supervisor John M. Phillips to:

Agreement No.: A-15796

- a. Approve and authorize the Director of Health or the Assistant Director of Health to sign a non-standard Agreement with Clear Labs, Inc. in the amount of \$442,483 to provide a CL-Assurance One Plans annual preventative maintenance plan agreement for three years and CL-WGS Reagent kits used for SAR S-CoV2 genome sequencing for the term of upon execution date through March 31, 2025; and
- b. Approve the recommendation of the Director of Health to accept non-standard risk provisions in the Agreement; and
- c. Approve and authorize the Director of Health or the Assistant Director of Health to sign up to three (3) future amendments to this Agreement where the amendments do not significantly change the scope of work and do not cause an increase of more than ten percent (10%) (\$44,248) of the original contract amount.

PASSED AND ADOPTED on this 10th day of May 2022, by roll call vote:

AYES: Supervisors Alejo, Phillips, Lopez, Askew and Adams
NOES: None
ABSENT: None
(Government Code 54953)

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting May 10, 2022.

Dated: May 12, 2022
File ID: A 22-177
Agenda Item No.: 27

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California

Julian Lorenzana, Deputy