

**AMENDMENT No. 1 TO AGREEMENT BY AND BETWEEN
COUNTY OF MONTEREY and Cepheid**

THIS AMENDMENT No. 1 is made to the AGREEMENT by and between **Cepheid**, hereinafter “CONTRACTOR”, and the County of Monterey, a political subdivision of the State of California, hereinafter referred to as “County”.

WHEREAS, on March 3, 2022, the County and CONTRACTOR entered into an Agreement in the amount of \$12,801.93 for the term of March 3, 2022 through December 31, 2024, for the provision of three (3) years of annual preventative maintenance services; and

WHEREAS, the County and CONTRACTOR wish to amend the Agreement to increase funds by \$24,720.07 for a new Agreement amount not to exceed \$37,522, due to added services, and replace Exhibit A due to the added equipment in the Scope of Work.

NOW THEREFORE, the County and CONTRACTOR hereby agree to amend the AGREEMENT in the following manner:

1. **Section 2.0 “PAYMENTS BY THE COUNTY”** shall be amended by removing, “The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$24,720.07.” and replacing it with “The total amount payable by County to CONTRACTOR under this AGREEMENT shall not exceed \$37,522.
2. **EXHIBIT A – Scope of Services** shall be amended by adding two (2) Cepheid GeneXpert Six Color Single Modules. Exhibit A is deleted and replaced in its entirety and attached hereto as EXHIBIT A-1 All references in the Agreement to EXHIBIT A shall be construed to refer to EXHIBIT A-1.
3. Except as provided herein, all remaining terms, conditions, and provisions of the AGREEMENT are unchanged and unaffected by this AMENDMENT and shall continue in full force and effect as set forth in the AGREEMENT.
4. A copy of the AMENDMENT shall be attached to the original AGREEMENT executed by the County on March 3, 2022.

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IN WITNESS WHEREOF, the parties have executed this AMENDMENT on the day and year written below.

MONTEREY COUNTY

DocuSigned by:
Angelica Ruelas
40FC117BE799451
Contracts/Purchasing Officer

Dated: 3/23/2023 | 1:15 PM PDT

Approved as to Fiscal Provisions:

DocuSigned by:
Jennifer Forsyth
4E7E657875324E
Deputy Auditor/Controller

Dated: 3/23/2023 | 11:58 AM PDT

Approved as to Liability Provisions:

Risk Management

Dated:

Approved as to Form:

DocuSigned by:
Maureen Parkle
65EE9F1509BD412
Deputy County Counsel

Dated: 3/23/2023 | 10:40 AM PDT

Approved:

DocuSigned by:
Robert Young
C7A3B8A5C8A8474
Director of Health

Dated: 3/23/2023 | 2:38 PM PDT

CONTRACTOR

Cepheid Robert Uhlfelder
By: Robert Uhlfelder (Mar 16, 2023 16:57 PDT)

Signature of Chair, President, or
Vice-President
Robert Uhlfelder

SVP, Legal and General Counsel
Printed Name and Title

Dated: Mar 16, 2023

By: Deborah Gonyea
By: Deborah Gonyea (Mar 16, 2023 16:45 PDT)
(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)*
Deborah Gonyea

SVP and CFO
Printed Name and Title

Dated: Mar 16, 2023

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the 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.

EXHIBIT A-1

**To Agreement by and between
County of Monterey, hereinafter referred to as "County"
AND
Cepheid, 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:
- A.2** CONTRACTOR shall provide a Field Service Engineer (FSE) to perform regular scheduled annual preventative maintenance as outlined by manufacturer's recommendations. In addition to preventative maintenance, CONTRACTOR shall provide repair services when the instrument is failing to meet performance expectations for quality test results or operation.
- A.3** CONTRACTOR shall deliver and install two (2) GX SINGLE ADD SIX COLOR SINGLE MODULE ADD-ON.
- A.4** CONTRACTOR shall be responsible for all deliverables and services stated below:

Continue with the three (3) year GX 42A3Y, Advantage Service Plan, for Equipment Serial Number 830972, will include:

24x7 Telephone Support:

The Advantage Service Plan includes telephone technical support through its Technical Support Call Center. Technical Support personnel are available 24 hours per day, seven (7) days per week. Holiday coverage is from 10:00am – 6:00pm (EST) for January 1st, the 4th Thursday in November and December 25th.

The call number is: 1-888-838-3222.

Onsite coverage:

5 days per week, Monday – Friday, 8:00am – 6:00pm, daily

Under this Agreement, Tech Support, maintenance, and repair for covered GeneXpert systems will be prioritized over customers without a service plan. As part of the services offered under this Agreement, CONTRACTOR will provide, at no additional charge, all parts, labor, and return shipping costs associated with GeneXpert/GeneXpert Infinity system repair incurred during the duration of this Agreement. Routine parts replacement includes any device associated with the

system, except for parts provided in calibration kits or consumable items such as printer cartridges or other supplies identified in the Operators Manual.

All system repairs under this Agreement will be performed by CONTRACTOR and/or a third-party service provider (TPSP) approved by CONTRACTOR and County. CONTRACTOR will be responsible for services provided by TPSP and will maintain current liability and auto insurance on the TPSP.

98% Uptime Guarantee and the definition of Downtime:

For any calendar quarter during the service Agreement, CONTRACTOR guarantees that any GeneXpert system covered by this Agreement will maintain the quoted uptime. The uptime will be calculated using the following formula:

$$\text{Uptime} = ((T - \text{TNF}) \times 100) / T$$

where T is the total number of hours that the system is typically used per quarter (determined by multiplying the number of hours per day that the system is typically in use by 13 weeks in a quarter) and TNF is the number of hours that the system was unable to run tests during the time T. If the system is unable to run tests, the system will be considered down. Downtime scheduled for preventative maintenance or any other scheduled event, including downtime scheduled by the customer, will not be included in the calculation of TNF.

- County will calculate uptime after each calendar quarter. If uptime is less than the guaranteed value, County will be compensated an additional week of coverage for a maximum of one (1) week per calendar quarter.
- At CONTRACTOR'S sole discretion, parts may be either repaired or replaced with new or reconditioned parts from an Authorized Cepheid Service Center. Parts for which replacements have been provided by CONTRACTOR shall, at CONTRACTOR'S option, become the property of CONTRACTOR. CONTRACTOR reserves the right to determine conclusively what repairs are performed on the system.
- GeneXpert systems or components thereof must not be returned to CONTRACTOR without prior arrangement with CONTRACTOR. Cepheid Service will issue a Return Material Authorization (RMA) number, which must be obtained prior to shipping any item to CONTRACTOR. If a system needs to be returned to CONTRACTOR for repair, CONTRACTOR will offer a loaner system free of charge.
- Prior to the arrival of a Cepheid Service Representative or shipment of a system or component thereof to the Cepheid Service Center, County must ensure that the system is safe to handle according to Cepheid's procedures described in the applicable Operator Manual. County must inform CONTRACTOR of any hazards which may be encountered by CONTRACTOR during the service visit. County must provide a completed, "Clearance Certificate" from CONTRACTOR with any item shipped to

CONTRACTOR. The Clearance Certificate must list all potential biohazards that have been analyzed on the system or to which the system has been exposed.

- CONTRACTOR will use reasonable efforts to schedule a visit to occur within two (2) business days after Technical Support determines the need for on-site service.
- This Agreement covers only defects arising from normal usage and does not cover malfunctions or failures resulting from: Operation in an unsuitable environment, use of the system for purposes other than that for which it was designed, unauthorized attachments, acts of nature, unusual physical or electrical stress, modifications or repairs done by other than a Cepheid or Cepheid-authorized service provider, or misuse, abuse or neglect of the system.
- All repair work completed by CONTRACTOR'S Service Representatives is warranted to have been performed in accordance with industry standards for the greater of ninety (90) days or for the duration of this Agreement. All replacement parts used by CONTRACTOR are warranted to be free from defects in workmanship.
- Except as stated in the immediately preceding paragraph above, CONTRACTOR disclaims all warranties, express or implied, including the implied warranties of merchantability and fitness for a particular purpose.
- If CONTRACTOR does not perform the services provided for in this Agreement, County's sole remedy shall be return of any fees or charges paid by County in connection with this Agreement.
- CONTRACTOR shall not be liable for any incidental or consequential damages (including lost profits) for breach of any of its obligations under this Agreement, including breach of warranty.
- Service under this Agreement shall not be transferable and shall be binding on the Parties hereto, their successors and assigns.

County Obligations:

County shall not attempt to repair or remove parts during the duration of this Agreement without prior written approval from CONTRACTOR. Any such attempt may invalidate this Agreement and/or result in additional Time and Material charges to County.

All written reports required under this Agreement must be delivered to Donna Ferguson, Public Health Lab Director, in accordance with the schedule below.

B. PAYMENT PROVISIONS

B.1 COMPENSATION/ PAYMENT

County shall pay an amount not to exceed **\$37,522** 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:

Pricing/Fees:

- CONTRACTORS compensation for service rendered shall be based on the following rates:

| GeneXpert Advantage | Serial Number | QTY | Unit Price | Service Plan | Years | Price (3 years) | Extended Price |
|---|---------------|-----|-------------|--------------|-------|------------------|----------------|
| GX42A3Y Service Agreement | 830972 | | | GX 4-2 | 3 | 3,906.00 | \$11,718 |
| GXSINGLEADD GENEXPERT Six Color Single Modules | 830972 | 2 | \$11,300.00 | | | | \$22,600 |
| | | | | | | Subtotal | \$34,318 |
| | | | | | | Tax | \$3,174 |
| | | | | | | Shipping/Freight | \$30.00 |
| | | | | | | Total | \$37,522 |

| | |
|---|--|
| 5 days per week 8 am to 5 pm (local time) | <p>FSE On-Site Annual Preventative Maintenance</p> <p>Annual on-site service visit by a trained Field Service Engineer (FSE) to conduct Preventative Maintenance (PM), including:</p> <ul style="list-style-type: none"> Replace worn module ejectors Lubricate moving parts Replace fan filters Brush Clean Module optics Replace automation batteries (if necessary) Xpert Check <p>CONTRACTOR will provide any and all GeneXpert/GeneXpert Infinity System updates (bug fixes, etc.) and Cepheid software upgrades (software feature enhancements) at no additional charge. This will not include upgrades to hardware or third-party software.</p> |
|---|--|

- CONTRACTOR'S pricing for one-time annual system maintenance includes labor and materials of Annual Maintenance.
- CONTRACTOR shall submit invoices upon completion of deliverables.
- 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.

Invoices shall be submitted in duplicate to:

Monterey County Health Department
Public Health Bureau-Accounts Payable
1270 Natividad Road,
Salinas, CA. 93906
(831) 755-4500
412-PHFiscal@co.monterey.ca.us

Monterey County Health Department
Public Health Lab-Donna Ferguson
1270 Natividad Road,
Salinas, CA. 93906
(831)755-4636
fergusond@co.monterey.ca.us

Invoices shall:

- a) Be prepared on Contractor letterhead. An authorized official, employee, or agent certifying that the expenditures claimed represent services performed under this contract must sign invoices.
- b) Bear the Contractor's name as shown on the agreement.
- c) Be submitted monthly; the annual payable amount per section B1
- d) Identify the billing and/or performance period covered by the invoice.
- e) Itemize costs for the billing period in the same detail as indicated in the scope of services in the agreement. Reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by the County of Monterey.