

**AMENDMENT NO. 2  
TO AGREEMENT BY AND BETWEEN  
COUNTY OF MONTEREY AND  
CEPHEID**

**THIS AMENDMENT NO. 2** to the Agreement is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter referred to as "County"), and Cepheid (hereinafter referred to as "CONTRACTOR") with respect to the following.

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

**WHEREAS**, on March 23, 2023, County and CONTRACTOR entered into Amendment No. 1 to Agreement, for the purchase of new equipment and increasing the maximum contract liability to \$37,522; and


**WHEREAS**, County and CONTRACTOR wish to extend the term of Agreement to June 30, 2029, and to increase the maximum contract liability to \$197,333.

**NOW THEREFORE**, County and CONTRACTOR hereby agree as follows:

1. **Paragraph 2, "Payment Provisions", shall be amended by removing** "The total amount payable by County to CONTRACTOR under this Agreement is not to exceed the sum of \$37,522." **and replacing it with** "The total amount payable by County to CONTRACTOR under this Agreement is not to exceed the sum of \$197,333.".
2. EXHIBIT A-1 is deleted and replaced in its entirety and attached hereto as EXHIBIT A-2. All references in the Agreement to EXHIBIT A-1 shall be construed to refer to EXHIBIT A-2.
3. Except as provided herein, all remaining terms, conditions, and provisions of the Agreement are unchanged and unaffected by this Amendment No. 2 and shall continue in full force and effect as set forth in the Agreement.
4. A copy of this Amendment No. 2 shall be attached to the original Agreement executed by County on March 3, 2022.


**IN WITNESS WHEREOF**, County and CONTRACTOR have executed this Amendment No. 2 as of the day and year written below. ggg

COUNTY OF MONTEREY

By:  DocuSigned by:  
30723000718749F

Contracts/Purchasing Officer


Date: 4/24/2024 | 4:17 PM PDT

By:  DocuSigned by:  
C7A30BA59CA8423

Elsa Mendoza Jimenez, Director of Health Services

Date: 4/24/2024 | 5:28 PM PDT

Approved as to Form

By:  DocuSigned by:  
00F8E8C10909B1419

County Counsel

Date: 4/24/2024 | 3:18 PM PDT

Approved as to Fiscal Provisions

By:  DocuSigned by:  
E7D9E8A827A5A6E8

Auditor/Controller

Date: 4/24/2024 | 3:50 PM PDT

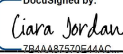
Approved as to Liability Provisions

By: \_\_\_\_\_

Risk Management

Date: \_\_\_\_\_

CONTRACTOR

By:  DocuSigned by:  
7B4AAB7570544AC

Signature of Chair, President, or Vice President

Ciara Jordan, Sr. Manager, Contract Compliance and Administration

Name and Title

Date: 4/23/2024 | 10:00 AM PDT

By:  DocuSigned by:  
92B2C9DBA4BB43D...

Signature of Secretary, Asst. Secretary, CFO,  
Treasurer, or Asst. Treasurer

Elmer Ma, Commercial & Gov't Contract Analyst

Name and Title

Date: 4/23/2024 | 9:48 AM PDT

County Board of Supervisors' Agreement No. \_\_\_\_\_ approved on \_\_\_\_\_

**\*INSTRUCTIONS:** If CONTRACTOR is a corporation, including non-profits 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 the 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.

PH Laboratory Cephid  
Term: 03/3/2022 to 06/30/2029  
NTE: \$197,333

## **EXHIBIT A-2**

**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.**

**Provide 4-year GX08A4Y Advantage Service Plan, for Equipment, Serial Number for GX 16-8 will be provided upon delivery of equipment.**

**Advantage Service Plan shall 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 1<sup>st</sup>, the 4<sup>th</sup> Thursday in November and December 25<sup>th</sup>.

**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.

**A.5** CONTRACTOR **shall** install GeneXpert XVI R2, 8 module Desktop 10C to include the following:

- One Pro APC Power-Saving Back-Ups Kit-850-0386
- One B&W Printer for GeneXpert and Smartcycle
- GeneXpert System Daisy Chain Accessories-Daisykit
- One year warranty

**A.6** CONTRACTOR shall ship instrument and equipment to the following address:  
**County of Monterey Public Health Laboratory**  
**ATTN: Donna Ferguson**  
**1270 Natividad Road**  
**Salinas, CA 93906**

**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 Laboratory Director, in accordance with the schedule below.**

**B. PAYMENT PROVISIONS**

**B.1 COMPENSATION/ PAYMENT**

County shall pay an amount not to exceed **\$193,427** for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Services. CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

CONTRACTOR's pricing for one-time annual system maintenance includes labor and materials for Annual Maintenance.

5 days per week 8 am to 5 pm (local time)	FSE On-Site Annual Preventative Maintenance Annual on-site service visit by a trained Field Service Engineer (FSE) to conduct Preventative Maintenance (PM), including: Replace worn module ejectors Lubricate moving parts Replace fan filters Brush Clean Module optics Replace automation batteries (if necessary) Xpert Check  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.
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CEPHEID				
Qty	Description	SKU/Type	FY2022-FY2029	Total
2	GXSINGLEADD GENEXPERT Six Color Single Modules	830972	\$ 22,600.00	\$ 22,600.00
3	GX42A3Y Service Agreement-3 years	830972	\$ 11,718.00	\$ 11,718.00
1	Shipping/Freight: GENEXPERT Six Color Single Modules		\$ 30.00	\$ 30.00
	Tax: \$34,318 x 9.25%		\$ 3,174.00	\$ 3,174.00
1	GeneXpert 16x8 Instrument	GXXVI-8-D-10C	\$ 97,119.00	\$ 97,119.00
1	Pro APC Power-Saving Back-Ups Kit	850-0386	\$ 1,050.00	\$ 1,050.00
1	B&W Printer for Genexpert and Smartcycle	Printer BW	\$ 260.00	\$ 260.00
1	Genexpert System Daisy Chain Accessories	DaisyKit	\$ 84.00	\$ 84.00
1	GX 16x8 4-Year Service Agreement	GX08A4Y	\$ 46,852.00	\$ 46,852.00
1	Instrument Shipping: GeneXpert 16x8		\$ 1,000.00	\$ 1,000.00
1	Tax: \$145,364 x 9.25%		\$ 13,446.00	\$ 13,446.00
	Pricing for one-time annual system maintenance includes labor and material of Annual Maintenance.			
<b>Not to Exceed</b>				<b>\$ 197,333.00</b>

Upon completion of activities please submit invoice no later than 30 days

CONTRACTOR may request in advance of providing services and County may approve adjustments to the Total Each Fiscal Year expenditure amount outlined in the table above so long as the Net to Exceed total of \$197,333.00 is not exceeded.

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.

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:

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

County of Monterey Health Department  
Public Health Laboratory-Donna Ferguson  
1270 Natividad Road  
Salinas, CA 93906  
(831)755-4636  
[fergusond@co.monterey.ca.us](mailto: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.
- 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.