

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

May 24, 2022

FROM

ANGELA GODWIN, Agriculture Commissioner/Sealer, Department of Agriculture/Weights & Measures

SUBJECT

Purchase of Unbudgeted Fixed Asset – High-Performance Liquid Chromatography Cannabis Analyzer

RECOMMENDATION(S)

1. Authorize the purchase of one unbudgeted High-Performance Liquid Chromatography Cannabis Analyzer, which includes non-standard terms in the quote document, for a total cost of \$17,935.
2. Authorize the Auditor-Controller/Treasurer/Tax Collector to post budget adjustments, as indicated in the Financial Impact Section (Four votes required).
(Presenter: Angela Godwin, Agriculture Commissioner/Sealer, 387-2117)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

Approval of this item will not result in use of Discretionary General Funding (Net County Cost). The Department of Agriculture/Weights & Measures (AWM) will fund the High-Performance Liquid Chromatography Cannabis Analyzer with a budget adjustment in the amount of \$17,935 from salary savings resulting from staffing vacancies. This item authorizes the Auditor-Controller/Treasurer/Tax Collector to post adjustments to AWM's 2021-22 budget as follows:

Fund Center	Commitment Item/GL Account	Description	Action	Amount
6110001000	51001010	Regular Salary	Decrease	\$17,935
6110001000	54404040	Equipment	Increase	\$17,935

BACKGROUND INFORMATION

This item seeks approval for a budget adjustment to purchase one High-Performance Liquid Chromatography Cannabis Analyzer, which will test the Tetrahydrocannabinol (THC) levels in Industrial Hemp to ensure that it falls below the 0.3% THC level, which is the California mandated maximum percentage for Industrial Hemp. AWM currently has one High-Performance Liquid Chromatography Cannabis Analyzer in use that was previously purchased from Orange Photonics Inc. under the same terms and conditions. AWM uses the portable High-Performance Liquid Chromatography Cannabis Analyzer in the field to test suspected illegal cannabis production with the San Bernardino County Sheriff Marijuana Enforcement Team. The use of

Purchase of Unbudgeted Fixed Asset - High-Performance Liquid Chromatography Cannabis Analyzer
May 24, 2022

the portable High-Performance Liquid Chromatography Cannabis Analyzer in the field allows AWM to determine the THC level of the suspected illegal cannabis production on site, giving the San Bernardino County Sheriff Marijuana Enforcement Team and AWM personnel the ability to respond immediately if the suspected illegal cannabis production tested contains more than a 0.3% THC level. The purchase of a second portable High-Performance Liquid Chromatography Cannabis Analyzer will allow AWM to test suspected illegal cannabis production at two separate locations concurrently, giving the San Bernardino County Sheriff Marijuana Enforcement Team and AWM personnel the ability to respond immediately if the suspected illegal cannabis production tested contains more than a 0.3% THC level simultaneously at separate locations.

The Quote contains the following non-standard terms, which require Board of Supervisors approval:

1. The Quote's Buyer's Indemnification states that "To the extent permitted by applicable law, Buyer agrees to indemnify, defend and hold harmless Seller, and its affiliates, and their respective officers, directors, employees and agents (each, and "Indemnitee") from and against any and all costs, damages and expenses (including reasonable attorney's fees) incurred or suffered by any Indemnitee arising directly or indirectly from any third party claims relating to: (a) the breach by Buyer of any of Buyer's covenants, agreements, representations, warranties or other obligations in these terms; or (b) fraud, gross, negligence or intentional or willful misconduct by Buyer or Buyer's representatives in connection with these terms; or (c) any misuse or unintended use of the Goods".
 - The County Standard Term requires the Contractor to agree to indemnify the County in accordance with County Policy 11-07.
 - Potential Impact: Inclusion of this non-standard term would exclude the County from being compensated for loss due to any act or omission on the part of the contractor/vendor, their employees or subcontractors. It also requires the County to indemnify Seller in certain events even though Seller claims to have no legal obligations to do the same for the County.
2. The Quote's legal venue is the Commonwealth of Massachusetts and the choice of law is the Commonwealth of Massachusetts without regard to that state's conflict or choice of law's rules.
 - The County Standard Term is governing law is the State of California, and venue is San Bernardino County.
 - Potential Impact: Inclusion of this non-standard term would require the County to seek relief, in the event necessary, by filing a lawsuit in Massachusetts utilizing Massachusetts law, which may be more unfavorable than California law. The County would need to be represented by an attorney who is licensed in the Commonwealth of Massachusetts as well.
3. The Quote's payment terms is net 30 days. "Late payment" in the form of interest at the rate of 1.5 % per month will be levied on all late payments, but in any case, not to exceed the maximum lawful rate under any applicable law.
 - The County Standard Term is payment will be Net 60 days with no interest or late payment penalties.
 - Potential Impact: Inclusion of this non-standard term will require payment by the earlier date and may subject the County to interest and penalties for late payment.
4. The Quote requires payment of attorney's fees in the event of a legal dispute.

**Purchase of Unbudgeted Fixed Asset - High-Performance Liquid
Chromatography Cannabis Analyzer
May 24, 2022**

- The County Standard Term is that each party shall be responsible for their own legal costs, including attorneys' fees, regardless of which side ultimately prevails in a legal dispute.
- Potential Impact: In the event of a legal dispute with the Seller, should the Seller be deemed to be the prevailing party, the County may be responsible for all of Seller's legal fees which may far exceed the price of the product.

AWM recommends approval of the purchase of one unbudgeted High-Performance Liquid Chromatography Cannabis Analyzer, including all non-standard terms, as the vendor is the sole provider of this equipment.

PROCUREMENT

AWM recommends purchase of the portable High-Performance Liquid Chromatography Cannabis Analyzer from Orange Photonics Inc. The portable High-Performance Liquid Chromatography Cannabis Analyzer is patented technology that is sole source designed and developed by Orange Photonics Inc. Orange Photonics Inc. is the sole provider of the portable High-Performance Liquid Chromatography Cannabis Analyzer. Purchasing concurs with the non-competitive purchase of this proprietary equipment.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Daniel Pasek, Deputy County Counsel, 387-5455) on May 2, 2022; Auditor-Controller/Treasurer/Tax Collector (Vanessa Doyle, Chief Deputy, 387-5669) on May 2, 2022; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on May 2, 2022; Finance (Elias Duenas, Administrative Analyst, 387-4052) on May 2, 2022; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on May 3, 2022.

**Purchase of Unbudgeted Fixed Asset - High-Performance Liquid
Chromatography Cannabis Analyzer
May 24, 2022**

Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Janice Rutherford
Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: May 24, 2022



cc: File - Agriculture Weights & Measures w/attach
CCM 05/25/2022