

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

March 15, 2022

**FROM**

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

**SUBJECT**

Non-financial Material Transfer Agreement with Hologic, Inc. for Provision of Material for Research

**RECOMMENDATION(S)**

Approve a non-financial Material Transfer **Agreement No. 22-170** with Hologic, Inc. for the provision of the fetal fibronectin analyzer system, fetal fibronectin collection kits, and cassettes at no cost for research purposes, for the period of March 15, 2022 through March 14, 2024.

(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) as the agreement with Hologic, Inc. (Hologic) is non-financial in nature.

**BACKGROUND INFORMATION**

Obstetricians and gynecologists routinely use fetal fibronectin (fFN) swabs to predict pre-term labor. Researchers at ARMC wish to conduct research to see if the same fFN swabs can also be used to predict responders for inductions. Hologic, who manufactures the fFN swabs, is willing to provide ARMC researchers with swabs and analyzers (collectively, "Materials") for the research at no cost. However, Hologic is requesting the execution of a Material Transfer Agreement. Approval of this agreement will allow researchers at ARMC to conduct this research with the Materials Hologic would provide at no cost to the County.

The Material Transfer Agreement is Hologic's standard Material Transfer Agreement, negotiated by the parties, with the following non-standard terms that differ from the standard County contract terms:

1. The County is required to defend and indemnify Hologic for claims that arise out of ARMC's use of the Materials or any products made by ARMC that includes or is derived from the Materials, except claims that arise out of the gross negligence or willful misconduct of Hologic.
  - The standard County contract does not contractually obligate the County to indemnify the other contracting party under any circumstance.
  - Potential Impact: By agreeing to indemnify Hologic, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred

**Non-financial Material Transfer Agreement with Hologic, Inc. for  
Provision of Material for Research  
March 15, 2022**

against the County, time limited, or expense limited could be brought against Hologic without such limitations and the County would be responsible to defend and reimburse Hologic for costs, expenses, and damages.

2. In the event that that the research being conducted by ARMC results in an invention, new use, or a product derived from the Materials (collectively, "Inventions"), the County is required to assign any rights to such Inventions to Hologic.
  - The standard County contract generally requires the contractor to assign any rights in anything developed as a result of the contract to the County.
  - Potential Impact: If any Invention is developed using the Materials, the rights to that Invention would have to be assigned to Hologic, meaning that the County would no longer own the Invention and have no rights associated with the Invention. However, AMRC's researcher has represented to ARMC that this research is not anticipated to result in any Invention.
3. The Agreement does not include all of the standard County insurance requirements, including the waiver of subrogation and naming the County as an additional insured.
  - The County's standard contract requires contractors to carry certain insurance coverage as determined by the County's Department of Risk Management, and for contractors to add the County as an additional insured in their policies and to waive the right to subrogation.
  - Potential Impact: The Agreement does not include County standard insurance requirements. This means that the County has no assurance of an insurance company that Hologic will be financially responsible for claims that may arise from the Agreement, which could result in expenses to the County. No waiver of subrogation may allow Hologic's insurers, if any, to bring suit against the County. Not being added as an insured to Hologic's insurance policies mean that the County cannot directly turn to Hologic's insurers in pursuing a claim as an additional insured.
4. Hologic is not contractually obligated to defend or indemnify the County under any circumstance.
  - The standard County contract for intellectual property indemnity is: Contractor will indemnify, defend and hold harmless County and its officers, employees, agents, and volunteers from any and all third party claims, costs (including without limitations reasonable attorney's fees), and losses for infringement of any United States patent, copyright, trademark, or trade secret (Intellectual Property Rights) by any goods or services. The County standard contract general indemnity provision requires the Contractor to indemnify, defend, and hold the County harmless from third party claims arising out of the acts, errors, or omissions of any person.
  - Potential Impact: If the County is sued for any claim, including intellectual property infringement, based on ARMC's use of Hologic's Materials, the County may be solely liable for the costs of defense and damages. However, depending on the cause of the injury that resulted in the claim, the County may be able to pursue an implied indemnity claim against Hologic.

ARMC recommends the approval of the Material Transfer Agreement, including the non-standard terms, with Hologic as it will provide for the safety, health and social services needs of County residents by allowing physicians at ARMC to conduct research using materials provided at no cost by Hologic to test the prediction responders in the induction of labor in pregnant woman.

**Non-financial Material Transfer Agreement with Hologic, Inc. for  
Provision of Material for Research  
March 15, 2022**

**PROCUREMENT**

Not applicable.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel, 387-5455) on February 18, 2022; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on February 23, 2022; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-5423) on February 23, 2022.

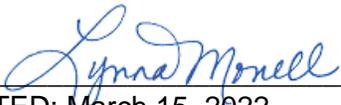
**Non-financial Material Transfer Agreement with Hologic, Inc. for  
Provision of Material for Research  
March 15, 2022**

Record of Action of the Board of Supervisors  
San Bernardino County

**APPROVED (CONSENT CALENDAR)**

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

Lynna Monell, CLERK OF THE BOARD

BY  \_\_\_\_\_  
DATED: March 15, 2022



cc: ARMC- Gilbert w/agree  
Contractor- C/O ARMC w/agree  
File- w/agree  
LA 03/16/2022