

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

May 7, 2024

FROM

JOSHUA DUGAS, Director, Department of Public Health

SUBJECT

QuantStudio 5 Dx Loaned Laboratory Equipment and End User License Agreement

RECOMMENDATION(S)

1. Accept the loaned no-cost QuantStudio 5 Dx laboratory equipment used for running polymerase chain reaction tests, from the California Department of Public Health, through its contractor Helena Health, retroactively from April 23, 2024 until terminated by Helena Health, the County, or until the manufacturer stops supporting the equipment.
2. Approve the End User License **Agreement No. 24-373** with Life Technologies, including non-standard terms, as required for installing the QuantStudio 5 Dx laboratory equipment.
3. Authorize the Director of the Department of Public Health or the Laboratory Director to electronically accept the End User License Agreement and any future non-substantive updated terms of the agreement, subject to review by County Counsel.
4. Direct the Director of the Department of Public Health to transmit a printed copy of the End User License Agreement, and any future non-substantive updated terms that are electronically accepted of the agreement, to the Clerk of the Board of Supervisors within 30 days of acceptance or execution.

(Presenter: Joshua Dugas, Director, 387-9146)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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

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 it is loaned equipment from the California Department of Public Health (CDPH), through its contractor Helena Health, and is non-financial in nature. There are no delivery or installation costs associated with the QuantStudio 5 Dx laboratory equipment. The Department of Public Health (DPH) will continue to purchase the disposable supplies required to run individual tests.

BACKGROUND INFORMATION

Approval to accept the loaned equipment from Helena Health will allow DPH to borrow and utilize, at no cost, the QuantStudio 5 Dx laboratory equipment. This equipment is used to process various Polymerase Chain Reaction (PCR) tests which screen for numerous infectious diseases.

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By obtaining the QuantStudio 5 Dx laboratory equipment by loan rather than purchase, DPH is able to operate in a fiscally responsible manner by reducing expenses related to the initial purchase and future need to replace these items. The QuantStudio 5 Dx costs approximately \$90,000 and will replace the currently used ABI 7500 Fast Dx instrument, which will soon become obsolete and will no longer be supported by the manufacturer. The new equipment comes with a four-year Service Agreement in which the manufacturer will replace, repair, and maintain the equipment at no charge to the County. At the end of the four-year period, DPH will be required to purchase an ongoing Service Agreement and will return to the Board for acceptance, if needed.

Though there is no contract associated with accepting the loaned equipment, an End User License Agreement (EULA) must be accepted at the time of installation. The EULA is a standard non-negotiable agreement and contains non-standard terms as follows:

1. Life Technologies disclaims the warranty of non-infringement and provides no indemnification for claims made against the County based on Life Technologies' performance under the contract.
 - There is no warranty requirement in the County standard contract. The standard contract provision 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 limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services.
 - Potential Impact: The disclaimer of a warranty of non-infringement, coupled with the lack of indemnity for intellectual property infringement means that, should the County be sued for intellectual property infringement based on its use of Life Technologies software or services, the County will be liable for the costs of defense and damages. While infringement claims against end users are rare, they have been known to occur, and the County could be responsible for defense costs and damages, which could exceed the total contract amount.
2. Life Technologies maximum liability to the County is limited to the purchase price of the product.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the Agreement amount leaving the County financially liable for the excess.

DPH recommends acceptance of the loaned no-cost laboratory equipment and approval of the EULA, including non-standard terms, as the QuantStudio 5 Dx will provide upgraded equipment for the DPH laboratory, ensuring accurate, real-time PCR tests are available to the public.

On February 2, 2024, DPH was notified of the opportunity to receive replacement laboratory equipment from CDPH, with the requirement that equipment must be accepted by counties no later than June 30, 2024. This item is being presented at this time, as this is the first available date following the required operational, fiscal, and legal reviews. Approval at this time will not impact DPH's services or activities.

PROCUREMENT

Not applicable.

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Agreement
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REVIEW BY OTHERS

This item has been reviewed by County Counsel (Adam Ebright, Deputy County Counsel, 387-5455) on April 18, 2024; Risk Management (Greg Ustaszewski, Staff Analyst, 386-9088) on April 22, 2024; Finance (Carl Lofton, Administrative Analyst, 387-5404) on April 18, 2024; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on April 22, 2024.

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Curt Hagman
Ayes: Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.
Absent: Col. Paul Cook (Ret.)

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: May 7, 2024



cc: PH - Bailey w/agree
Contractor - c/o PH w/agree
File - w/agree
CCM 05/13/2024