

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

April 9, 2024

**FROM**

**JOSHUA DUGAS, Director, Department of Public Health**

**SUBJECT**

Service Agreement with Cepheid for Service and Preventative Maintenance of the GeneXpert Instrument

**RECOMMENDATION(S)**

1. Approve the GeneXpert Infinity Service **Agreement No. 24-320** with Cepheid, including non-standard terms, for the service and preventative maintenance of the Cepheid GeneXpert instrument used to test for respiratory diseases, in the amount not-to-exceed \$142,687 for the period of April 20, 2024 through April 19, 2028.
2. Authorize the Director of the Department of Public Health or Assistant Director of the Department of Public Health to electronically accept the terms and conditions of the GeneXpert Infinity Service Agreement with Cepheid, and any future non-substantive amendments, on behalf of the County, subject to review by County Counsel.
3. Direct the Director of the Department of Public Health to transmit all amendments in relation to the GeneXpert Infinity Service Agreement with Cepheid to the Clerk of the Board of Supervisors within 30 days of execution.

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

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Provide for the Safety, Health and Social Service Needs of County Residents.**

**FINANCIAL IMPACT**

This item does not impact Discretionary General Funding (Net County Cost). The four-year GeneXpert Infinity Service Agreement (Agreement) with Cepheid, in the amount not-to-exceed \$142,687, will be funded with a Disease Control and Prevention (CDC) Epidemiology and Laboratory Capacity Enhancing Detection grant that passes through the California Department of Public Health to the County Department of Public Health (DPH) in the amount of \$76,544 for the first two years. The remaining two years of the Agreement will be funded through various sources including Medi-Cal, Medicare, fee-for-service, and 1991 Realignment. Adequate appropriation and revenue are included in the DPH 2023-24 budget and will be included in future recommended budgets.

**BACKGROUND INFORMATION**

DPH purchased two Cepheid GeneXpert instruments in 2020 to support tuberculosis (TB) and COVID-19 testing. The GeneXpert is an automated modular instrument that uses small self-contained cartridges designed for Nucleic Acid Amplification testing (NAAT) to identify single or multiple infectious agents in less than two hours with minimal manipulation by trained staff. This instrument allows the rapid detection of TB and provides testing services for DPH and

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local hospitals, including Arrowhead Regional Medical Center (ARMC). TB is a serious and highly infectious disease that is currently increasing in California where the case rate is twice the national average. The rapidity of the NAAT allows hospital patients to be treated sooner and removed from isolation, which improves overall health outcomes.

In addition to TB testing, DPH uses this system to test for a variety of respiratory virus panels, which includes COVID-19, Respiratory Syncytial Virus (RSV), and Influenza. Continuing to provide testing supports the tracking of these infections throughout the community. The recommended Agreement will allow DPH to continue these services.

DPH has had an agreement with Cepheid since 2021. However, each past agreement had a term of one year and was within the Purchasing Agent's authority. The current Agreement is for a four-year term, and requires Board of Supervisors approval based on the non-standard Agreement terms.

The Agreement is Cepheid's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. Cepheid is unwilling to negotiate these terms. The non-standard and missing terms include the following:

1. The Agreement is silent on governing law.
  - The County standard contract requires California governing law.
  - Potential Impact: Having no specified governing law in the Agreement results in uncertainty over which state's laws will govern the interpretation of the Agreement and leads to ambiguity in interpretation of the Agreement terms. Any questions, issues or claims arising under this Agreement could require the County to hire outside counsel competent to advise on the applicable state law, which may result in fees that exceed the total Agreement amount.
2. The Agreement does not require Cepheid to indemnify the County, as required by County Policies 11-05 and 11-07, including for intellectual property infringement claims.
  - The County standard contract indemnity provision requires the contractor to indemnify, defend, and hold County harmless from third party claims arising out of the acts, errors or omissions of any person.
  - Potential Impact: Cepheid is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from Cepheid's negligent or intentional acts and intellectual property infringement. If the County is sued for any claim, the County may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount.
3. The liability to the County is limited and equal to the fees paid for the term of the Agreement.
  - The County standard contract does not include a limitation of liability.
  - Potential Impact: Cepheid caps its liability to the County for all claims arising under the Agreement or arising from Cepheid's gross negligence or willful misconduct. Claims could exceed the liability cap and the Agreement amount leaving the County financially liable for the excess. In addition, the County's liability under the Agreement is not similarly limited.
4. Cepheid provides the service "AS IS" and disclaims all warranties of any kind.

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- There is no warranty requirement in the Agreement with Cepheid. The standard contract requires its vendors and service providers to fully warrant the products and services they provide to the County.
  - Potential Impact: The County's use of the services and/or products is solely at its own risk.
5. The Agreement does not require Cepheid to meet the County's insurance standards as required pursuant to County Policy 11-07.
- The County Policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and set forth in the County standard contract.
  - Potential Impact: The Agreement does not include County standard insurance requirements. This means that the County has no assurance that Cepheid will be financially responsible for claims that may arise.

DPH recommends the approval of the Agreement, including the non-standard terms, as the instruments provide necessary testing for TB and other respiratory diseases which promote the health and wellness of residents.

**PROCUREMENT**

DPH operates the GeneXpert instrument for clinical testing purposes. Cepheid holds proprietary service and preventive maintenance for the GeneXpert instrument. Local health departments are required by federal standards (Clinical Laboratory Improvement Amendments of 1988) to maintain preventative maintenance agreements used for patient testing, which includes the use and maintenance of the GeneXpert instrument.

Approval of this non-competitive Agreement will provide the GeneXpert instrument service, preventive maintenance, and support services for a four-year term from April 20, 2024 through April 19, 2028. The Purchasing Department concurs with this non-competitive procurement due to the proprietary nature of this Agreement.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Adam Ebright, Deputy County Counsel, 387-5455) on March 18, 2024; Purchasing (Jessica Barajas, Supervising Buyer, 387-2065) on March 20, 2024; Risk Management (Victor Tordesillas, Director, 386-8623) on March 25, 2024; Finance (Iliana Rodriguez, Administrative Analyst, 387-4205) on March 25, 2024; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on March 25, 2024.

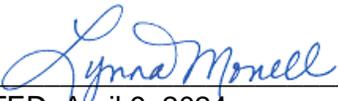
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Record of Action of the Board of Supervisors  
San Bernardino County

**APPROVED (CONSENT CALENDAR)**

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

Lynna Monell, CLERK OF THE BOARD

BY   
DATED: April 9, 2024



cc: PH - Saucedo w/agree  
Contractor - c/o PH w/agree  
File - w/agree  
CCM 04/15/2024