



Contract Number

SAP Number

Arrowhead Regional Medical Center

Department Contract Representative	<u>William L. Gilbert</u>
Telephone Number	<u>(909) 580-6150</u>
Contractor	<u>Abbott Laboratories</u>
Contractor Representative	<u>Tiffany Netters</u>
Telephone Number	<u>(442) 248-0240</u>
Contract Term	<u>Dec. 16, 2020 to Dec. 15, 2021</u>
Original Contract Amount	<u>NTE \$405,150</u>
Amendment Amount	<u></u>
Total Contract Amount	<u>NTE \$405,150</u>
Cost Center	<u>7522</u>

Briefly describe the general nature of the contract: Amendment No. 1 to Master Agreement between the California Department of Public Health (CDPH) and Abbott Laboratories, that designates Arrowhead Regional Medical Center (ARMC) as a System Member and binds the County to the terms of the Master Agreement, for ARMC to purchase reagents for ID NOW COVID-19 rapid test kits at the prices negotiated by CDPH, for an amount not to exceed \$405,150, effective upon execution through December 15, 2021.

FOR COUNTY USE ONLY

Approved as to Legal Form

Charles Phan, Deputy County Counsel

Date 4/8/2021

Reviewed for Contract Compliance



Date

Reviewed/Approved by Department

William L. Gilbert, Director

Date

AMENDMENT NUMBER 1

ABBOTT NORTH AMERICA, LLC, 30 SOUTH KELLER ROAD, SUITE 100, ORLANDO, FLORIDA 32810

Customer Shipping Address:		Billing Address:	
Customer Name	California Department of Public Health Infectious Disease Laboratory Branch	Customer Name	California Department of Public Health
Street Address	850 Marina Bay Parkway	Street Address	1615 Capitol Ave
City, State, ZIP	Richmond, CA 94804	City, State, ZIP	Sacramento, CA 95814
Customer Contact Name		Contact Name	
Contact Phone		Phone	

As of the Amendment Date, this Amendment modifies the COVID-19 Master Agreement referenced below (the "Agreement") between Abbott Rapid Dx North America, LLC ("Abbott") and the customer set forth above ("Customer").

Effective Date of the Agreement: December 16, 2020 **End Date:** December 15, 2021

In consideration of the premises and the mutual covenants and agreements contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Amendment. Customer and Abbott hereby amend the Agreement as follows:

A. The Term is extended for an additional period as referenced below, which shall commence immediately upon the expiration of the Term and continue until the new Term end date, if applicable:

Additional Term: No change in Term. **New End Date:** N/A

B. The Reagents table on the Signature Page of the Agreement shall be amended as follows:

No changes in the Reagents Table

Abbott Catalog#	Description	Total Volume (Tests)	Net Test Price	Net Kit Price	Purchase Commitment
190-000	ID NOW™ COVID-19 (24T)		\$0.00		\$0.00

No changes in the Controls & Calibrators Table.

Controls & Calibrators

Abbott Catalog#	Description	Net Price
190-080	ID NOW™ COVID-19 Controls	\$250.00

C. The Abbott-Owned Equipment table on the Signature Page of the Agreement shall be amended as follows:

No changes in the Abbott-Owned Equipment Table.

Abbott Catalog#	Description	Current Qty.	Additional Qty.	Total Qty.	Total Equipment Value

D. The Membership Exhibit to the Agreement (included in Amendment if checked) shall be amended with the attached, Membership Exhibit, with the following change:

- (i) ☒ System Member Addition(s)
- (ii) ☐ System Member Deletion(s)

2. Miscellaneous. All terms and conditions set forth in the Agreement that are not amended hereby shall remain in full force and effect. This Amendment shall be governed by and construed in accordance with the substantive law as defined in the Agreement. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which will constitute one and the same instrument. This Amendment is the product of both of the parties hereto and, in the event of a dispute over its interpretation, the language of this Amendment will not be construed against one party in favor of the other. This Amendment, together with the Agreement, constitutes the entire agreement between such parties pertaining to the subject matter hereof and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein. As of the Amendment Date, any reference to the Agreement shall be deemed to refer to the Agreement as amended by this Amendment. This Amendment is only complete and in effect if accepted and signed by a duly authorized signatory from both parties.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its authorized representative in its name and on its behalf.

CUSTOMER	ABBOTT RAPID Dx NORTH AMERICA, LLC
Signature: Timothy Bow <small>Digitally signed by Timothy Bow Date: 2021.03.24 19:50:23 -07'00'</small>	Signature: <small>DocuSigned by:</small> <i>Caroline Matos</i> <small>812034174910AE</small>
Name: Timothy Bow	Name: Caroline Matos
Title: Procurement / contract officer, Emergency Ops.	Title: Contract Administrator
Date:	AMENDMENT DATE: 3/26/2021

SYSTEM MEMBER: County of San Bernardino on behalf of Arrowhead Regional Medical Center

Signature: 

Name: Leonard X. Hernandez
Title: Chief Executive Officer
Date:

MEMBERSHIP EXHIBIT

System Members

Status Change	System Member Name	Street Address	City, ST and Zip Code
Addition	Arrowhead Regional Medical Center	400 N Pepper Ave	Colton, CA 92324

Non-Standard Terms for Abbott Laboratories Agreement

Payment

Payment terms are Net 30 days with late payment interest of the greater of 1.5% per month or the maximum amount permitted under Illinois law.

- County standard payment terms are Net 60 days with no interest or late payment penalties.
- **Potential Impact:** County standard processing time is 60 days or more. Failing to pay within 30 days of invoice will result in a material breach to the agreement, which would allow Abbott to terminate the agreement and seek other legal remedies, including charging the County interest.

Limitation of Liability

Abbott disclaims any liability for any punitive, special, indirect, incidental, or consequential damages, and caps its aggregate liability to the amount paid by the County for the products that give rise to a claim.

- The County standard contract does not include a limitation of liability.
- **Potential Impact:** Abbott caps its potential liability to the County at the amounts paid by the County for the product that causes injury or damages, and the limits the County's ability to recover the specified damages discussed above. Claims could exceed the liability cap and the contract amount, leaving the County financially liable for the excess.

Governing Law and Venue

The Agreement is governed by Illinois law and subject to the dispute resolution provision in the agreement, any lawsuit must be brought in the federal court of the Northern District of Illinois, or if there is no federal court, then in the state courts of Lake County, Illinois.

- The County standard contract provides that the venue of any action arising out of the contract will be the San Bernardino County Superior Court.
- **Potential Impact:** The agreement will be interpreted under Illinois law and any lawsuit must be brought in the specified court in Illinois. If a dispute arises out of the agreement, the County may be required to retain outside counsel in Illinois and proceed with the lawsuit in Illinois, which may result in fees to the County that exceed the total contract amount.

Binding Arbitration

Any dispute arising out of the Agreement must be resolved by binding arbitration.

- The County standard contract does not require the County to undergo binding arbitration.
- **Potential Impact:** The County waives the right to seek remedies in Court for any dispute arising under the Agreement, and the decision of the arbitrator is binding and non-appealable.

Termination for Convenience

There is no termination for convenience.

- The County standard contract gives the County the right to terminate the contract, for any

reason, with a thirty (30) day written notice of termination without any obligation other than to pay amounts for products purchased prior to the termination date.

- Potential Impact: There is no termination for convenience. If the County terminates the contract prior to the expiration of the term, the County will be breaching the agreement.

Attorney's Fees

Attorney's fees are awardable in arbitration based on the determination of the arbiter in a way that bears a reasonable relationship to the outcome of the arbitration, with the party prevailing on more issues recovering a relatively larger share of its legal fees and expenses.

- The County standard contract requires each party to bear their own attorney's fees and costs in any dispute.
- Potential Impact: If either party institutes arbitration related to the Agreement, the prevailing party may be entitled to recover reasonable attorneys' fees, which could exceed the total contract amount.

Indemnification

The Agreement does not contractually require Abbott to indemnify the County for any claims, including for intellectual property infringement claims.

- 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. The County standard contract general 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: Abbott is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from Abbott's negligent or intentional acts and intellectual property infringement. If the County is sued for any claim, including intellectual property infringement based on its use of Abbott's products, the County may be solely liable for the costs of defense and damages, which could exceed the total contract amount. County Counsel cannot advise on whether and to what extent Illinois law may allow the County to require Abbott to defend or indemnify it absent an express provision in the agreement.

Insurance

The Agreement does not require Abbott to meet the County insurance standards.

- The County standard contract requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.
- Potential Impact: The Agreement does not include County standard insurance requirements. This means that the County has no assurance that Abbott will be financially responsible for claims that may arise from the Agreement, which could result in expenses to the County that exceed the total contract amount.

Debarment and Suspension

Abbott does not expressly certify that it is not debarred or suspending from participation in the

transaction by any federal department or agency.

- The County's standard contract requires contractors to expressly certify that they are not debarred, suspended, or proposed to be debarred, or voluntarily excluded from participation in the transaction by any federal department or agency.
- Potential Impact: Without such certification, the County has no assurance that Abbott is not debarred or suspended from participation in the transaction by any federal department or agency.



County of San Bernardino DELEGATED AUTHORITY – DOCUMENT REVIEW FORM

This form is for use by any department or other entity that has been authorized by Board of Supervisors/Directors action to execute grant applications, awards, amendments or other agreements on their behalf. All documents to be executed under such delegated authority must be routed for County Counsel and County Administrative Office review prior to signature by designee.

Note: This process should NOT be used to execute documents under a master agreement or template, or for construction contract change orders. Contact your County Counsel for instructions related to review of these documents.

Complete and submit this form, along with required documents proposed for signature, via email to the department's County Counsel representative and Finance Analyst. If the documents proposed for signature are within the delegated authority, the department will submit the requisite hard copies for signature to the County Counsel representative. Once County Counsel has signed, the department will submit the signed documents in hard copy, as well as by email, to CAO Special Projects Team for review. If approved, the department will be provided routing instructions as well as direction to submit one set of the executed documents to the Clerk of the Board within 30 days.

For detailed instructions on submission requirements, reference Section 7.3 of the Board Agenda Item Guidelines as the Delegation of Authority does not eliminate the document submission requirements.

Department/Agency/Entity: Arrowhead Regional Medical Center

Contact Name: Billie Burch

Telephone: (909) 580-0062

Agreement No.: _____ Amendment No.: _____ Date of Board Item _____ Board Item No.: _____

Name of Contract Entity/Project Name: Master Agreement between Abbott and CDPH for COVID-19 Rapid Tests and Amendment 1

Explanation of request/Special Instructions:

On 3/9/21 (Item No. 53), the Board of Supervisors (Board) extended the authority of the Chief Executive Officer (CEO) through April 30, 2021, subject to ratification by the Board at the next available Board meeting to approve the competitive and non-competitive acquisition of any goods and equipment purchases to support the emergency response to COVID-19 that would require Board of Supervisors' approval under current law, regulations, or County policies.

The California Department of Public Health (CDPH) has entered into a Master Agreement with Abbott Laboratories for rapid COVID-19 tests. CDPH and Abbott have agreed to amend their agreement to list Arrowhead Regional Medical Center (ARMC) as a system member that can use the agreement to purchase the test kits at the rates negotiated with CDPH. Abbott's ID NOW COVID-19 rapid test offers a portable, molecular test that can provide results in less than 15 minutes. Having the option to offer such rapid tests to County residents will improve the efficiency of point-of-care testing at ARMC. Furthermore, the price is reasonable with a cartridge, which contains 24 tests, costing \$37 per test or \$888 total.

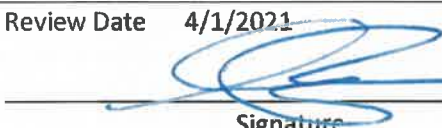
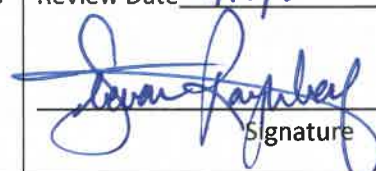
As a system member, ARMC can purchase these ID NOW tests through Purchase Orders (PO's). However, the master agreement between Abbott and CDPH has some non-standard terms to which the County would also be bound by issuing a PO against it. Therefore, the County CEO's approval to utilize the system member designation for Abbott ID NOW tests signified by his signature is requested on Amendment 1 that designates ARMC as a system member. The signed contract amendment will later be ratified by the Board. ARMC is in need of the test right away. CDPH has agreed to gift 10 tests to the hospital until use of the system member designation is approved and a purchase order is issued. However, that allocation of 10 tests, due to arrive the week of April 5, 2021, will likely last less than two weeks. Therefore, time is of the essence to approve/accept the system member designation and the non-standard contract terms associated with it.

Insert check mark that the following required documents are attached to this request:

- ☒ Documents proposed for signature (Note: For contracts, include a signed non-standard contract coversheet for contracts not submitted on a standard contract form).
- ☒ Board Agenda item that delegated the authority



County of San Bernardino
DELEGATED AUTHORITY – DOCUMENT REVIEW FORM

Department Routed to County Counsel	County Counsel Name: Charles Phan	Date Sent: 4/1/21
Reviewing County Counsel Use Only	Review Date <u>4/1/2021</u>  Signature	Determination: <input checked="" type="checkbox"/> Within Scope of Delegated Authority <input type="checkbox"/> Outside Scope of Delegated Authority
CAO-Special Projects Use Only	Review Date <u>4/12/21</u>  Signature <u>STEVEN RAUGHLEY</u>	Disposition: <input checked="" type="checkbox"/> Route for signature to: <input type="checkbox"/> Chair <input checked="" type="checkbox"/> CEO <input type="checkbox"/> Department <input type="checkbox"/> Return to Department for preparation of agenda item