



County of Santa Clara
Office of the County Executive
Procurement Department
2310 N. First Street Suite 201
San Jose, CA 95131-1040
Telephone 408-491-7400 • Fax 408-491-7496

AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND CARDINAL HEALTH FOR GOODS AND RELATED SERVICES

This Agreement is entered into by and between the County of Santa Clara (the "County") and Cardinal Health. ("Contractor") (the "Agreement").

The effective date of the Agreement is November 22, 2016. The parties, intended to be bound, mutually agree as follows:

KEY PROVISIONS

AGREEMENT TITLE: Sakura Tissue Tek xPress X120 Rapid Tissue Processor with Service and Maintenance

AGREEMENT NUMBER: 5500002836

INITIAL AWARD DATE: November 22, 2016

AGREEMENT TERM: November 22, 2016 through November 21, 2021, unless terminated earlier or otherwise amended

COMMODITY NAME: Laboratory Equipment, Maintenance and Repair

AUTHORIZED USER: Santa Clara Valley Medical Center-Department of Pathology and Laboratory Medicine

COUNTY DEPARTMENT CONTACT: Dr Sharmila Pramanik- Physician
Phone: 408/885-6608
Email: sharmila.pramanik@hhs.sccgov.org

SUPPLIER: Cardinal Health
700 Vaughn Rd
Dixon, CA 95620

SUPPLIER CONTACT: Hiep Vo
Laboratory Sales Consultant
Phone: 916-709-5941
Email: Hiep.vo@cardinalhealth.com

SUPPLIER NUMBER: 100196

Board of Supervisors: Mike Wasserman, Cindy Chavez, Dave Cortese, Ken Yeager, S. Joseph Simitian
County Executive: Jeffrey V. Smith

PURPOSE: To establish a contract with Cardinal Health

TAX STATUS: Product is taxable, Service is non-taxable

PAYMENT TERMS: Net 45

TOTAL AGREEMENT VALUE: Not to Exceed \$300,000
Contractor understands that this Not to Exceed figure does not represent a commitment by County to Contractor

COUNTY CONTRACT ADMINISTRATOR: Anu Ethiraj
Phone: 408-491-7431
Email: Anu.Ethiraj@prc.sccgov.org

REFERENCE: The following exhibits are incorporated and constitute a material part of the Agreement:

Exhibit A: County of Santa Clara Standard Terms and Conditions for Agreement for Goods and Related Services.

Exhibit B: Price Summary and Compensation Plan

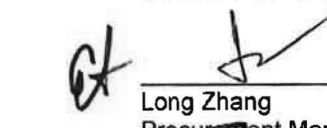
Exhibit C: Scope of Work
Attachment A: Installation And Acceptance Certificate

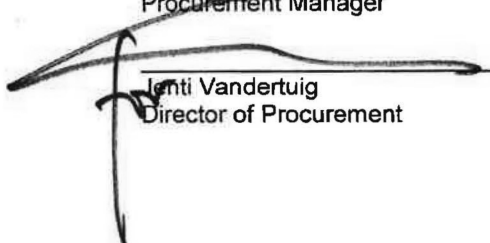
Exhibit D: Insurance


By signing below, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity, that he/she has the authority to bind the entity listed below to contractual obligations and that by his/her signature on this Agreement, the entity on behalf of which he/she acted, executed this Agreement.

COUNTY OF SANTA CLARA

CARDINAL HEALTH

 Long Zhang 11/22/16
Procurement Manager Date

 Janti Vandertuig 11/23/16
Director of Procurement Date

By: 

Print: MICHAEL ALLYN

Title: DIRECTOR OF SALES

Date: 11/21/16

Exhibit A

County of Santa Clara eStandard Terms and Conditions for Agreement for Goods and Related Services.

1. NON-EXCLUSIVE AGREEMENT

The Agreement does not establish an exclusive contract between the County and the Contractor. The County expressly reserves rights to, without limitation, the following: the right to utilize others to provide products, support and services; the right to request proposals from others with or without requesting proposals from the Contractor; and the unrestricted right to bid any such product, support or service.

2. PRODUCTS

Contractor agrees to provide the County all goods on terms set forth in the Agreement, including all Exhibits that are attached to the Agreement and incorporated, as well as all necessary equipment and resources. However, this Agreement does not provide authority to ship goods. That authority shall be established by contract release purchase orders placed by the County and sent to Contractor throughout the term of the Agreement. Each and every contract release purchase order shall incorporate all terms of this Agreement and this Agreement shall apply to same.

ANY ADDITIONAL OR DIFFERENT TERMS OR QUALIFICATIONS SENT BY CONTRACTOR, INCLUDING, WITHOUT LIMITATION, ELECTRONICALLY OR IN MAILINGS, ATTACHED TO INVOICES OR WITH ANY GOODS SHIPPED, SHALL NOT BECOME PART OF THE CONTRACT BETWEEN THE PARTIES. COUNTY'S ACCEPTANCE OF CONTRACTOR'S OFFER IS EXPRESSLY MADE CONDITIONAL ON THIS STATEMENT.

Contractor shall provide to the County, all documentation and manuals relevant to the goods to be supplied, at no additional cost. Such documentation shall be delivered either in advance of the delivery of goods or concurrently with the delivery of goods.

Employees and agents of Contractor, shall, while on the premises of the County, comply with all rules and regulations of the premises, including, but not limited to, security requirements.

If required, Contractor shall be responsible for installation, training and knowledge transfer activities in relation to the goods being supplied.

All equipment shall be delivered to a County site specified in the contract release purchase order, or if not so specified therein, in the Statement of Work/Specifications.

Contractor holds itself out as an expert in the subject matter of the Agreement. Contractor represents itself as being possessed of greater knowledge and skill in this area than the average person. Accordingly, Contractor is under a duty to exercise a skill greater than that of an ordinary person, and the manner in which performance is rendered will be evaluated in light of the Contractor's superior skill. Contractor shall provide equipment and perform work in a professional manner consistent, at minimum, with industry standards.

Contractor represents that all prices, warranties, benefits and other terms being provided hereunder are fair, reasonable and commensurate with the terms otherwise being offered by Contractor to its current customers ordering comparable goods and services.

County does not guarantee any minimum orders.

3. NECESSARY ACTS AND FURTHER ASSURANCES

The Contractor shall at its own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

4. COUNTING DAYS

Days are to be counted by excluding the first day and including the last day, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it is to be excluded.

5. PRICING

Unless otherwise stated, prices shall be fixed for the term of the Agreement, including all extensions. If any product listed in this Agreement is discontinued or upgraded prior to delivery, Contractor shall extend the same pricing towards a comparable replacement which is functionally equivalent or an upgraded version.

Exhibit B of the Agreement is the basis for pricing and compensation throughout the term of the Agreement.

Notwithstanding the above, if at any time during the term of the Agreement the Contractor offers special, promotional or reduced pricing when compared with the price paid by the County, County shall benefit from that pricing, and that pricing shall apply to the County at the same time that is offered to other entities. Contractor is required, on an ongoing basis, to inform the County of any such special, promotional or reduced pricing.

6. MODIFICATION

This Agreement or any contract release purchase order may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement contract release purchase order will be binding on County unless it is in writing and signed by County's Procurement Director.

7. TIME OF THE ESSENCE

Time is of the essence in the delivery of goods by Contractor under this Agreement and any contract release purchase order. In the event that the Contractor fails to deliver goods and/or services on time, the Contractor shall be liable for any costs incurred by the County because of Contractor's delay. For instance, County may purchase or obtain the goods and/or services elsewhere and the Contractor shall be liable for the difference between the price in the Agreement and the cost to the County; or County may terminate on grounds of material and Contractor shall be liable for County's damages.

The Contractor shall promptly reimburse the County for the full amount of its liability, or, at County's option, the County may offset such liability from any payment due to the Contractor under any contract with the County.

The rights and remedies of County provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law. The acceptance by County of late or partial performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the rights or requirements for the complete and timely performance of any obligation remaining to be performed by the Contractor, or of any other claim, right or remedy of the County.

8. HAZARDOUS SUBSTANCES

If any product being offered, delivered or supplied to the County is listed in the Hazardous Substances List of the Regulations of the Director of Industrial Relations with the California Occupational Safety and Health Standards Board, or if the product presents a physical or health hazard as defined in the California Code of Regulations, General Industry Safety Order, Section 5194 (T8CCR), Hazard Communication, the Contractor must include a Material Safety Data Sheet (MSDS) with delivery, or shipment. Each MSDS must reference the contract/purchase order number, and identify the "Ship To Address". All shipments and containers must comply with the labeling requirements of Title 49, Code of Federal Regulations by identifying the hazardous substance, name and address of manufacturer, and appropriate hazard warning regarding potential physical safety and health hazard.

9. SHIPPING AND RISK OF LOSS

Goods shall be packaged, marked and otherwise prepared by Contractor in suitable containers in accordance with sound commercial practices. Contractor shall include an itemized packing list with each shipment and with each individual box or package shipped to the County. The packing list shall contain, without limitation, the applicable contract release purchase order number.

Unless otherwise specified in writing, all shipments by Contractor to County will be F.O.B. point of destination. Freight or handling charges are not billable unless such charges are referenced on the order. Transportation receipts, if required by contract release purchase order, must accompany invoice. Regardless of F.O.B. point, Contractor agrees to bear all risks of loss, injury, or destruction to goods and materials ordered herein which occur prior to delivery at County's destination; and such loss, injury or destruction shall not release Contractor from any obligation hereunder.

Any shipments returned to the Contractor shall be delivered as F.O.B. shipping point.

10. INSPECTION AND RELATED RIGHTS

All goods and services are subject to inspection, testing, approval and acceptance by the County. Inspection shall be made within 60 days or a reasonable time after delivery, whichever period is longer. If the goods, services, or the tender of delivery fail in any respect to conform to the contract, the County may reject the entire tender, accept the entire tender, or, if the deliverables are commercially divisible, may, at its option, accept any commercial unit or units and reject the rest.

Contractor shall be responsible to reclaim and remove any rejected goods or items at its own expense. Should Contractor fail to reclaim or remove any rejected goods or items within a reasonable time, County shall, at its option dispose of such goods or items and require reimbursement from Contractor for any costs or expenses incurred.

In the event that the Contractor's goods are not accepted by County, the Contractor shall be liable for any costs incurred by the County because of such failure by Contractor. For instance, County may purchase or obtain the goods elsewhere and the Contractor shall be liable for the difference between the price in the Agreement and the cost to the County, and any other costs incurred; or County may terminate for cause on grounds of material breach and Contractor shall be liable for County's damages.

The Contractor shall promptly reimburse the County for the full amount of its liability, or, at County's option, the County may offset such liability from any payment due to the Contractor under any contract with the County.

The rights and remedies of County provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law. The acceptance by County of late or partial performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the rights or requirements for the complete and timely performance of any obligation remaining to be performed by the Contractor, or of any other claim, right or remedy of the County.

11. ADJUSTMENT BY COUNTY

The County reserves the right to waive a variation in specification of goods or services supplied by the Contractor. Contractor may request an equitable adjustment of payments to be made by County if County requires a change in the goods or services to be delivered. Any claim by the Contractor for resulting adjustment of payment must be asserted within 30 days from the date of receipt by the Contractor of the notification of change required by County; provided however, that the Procurement Director, if he/she decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment made for goods and services supplied by Contractor. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Purchasing Director shall have the right to prescribe the manner of disposition of such property. Nothing in this clause shall excuse performance by Contractor.

12. INVOICING

Contractor shall invoice according to Exhibit B of the Agreement. Invoices shall be sent to the County customer or department referenced in the individual contract release purchase order. Invoices for goods or services not specifically listed in the Agreement will not be approved for payment.

Invoices shall include: Contractor's complete name and remit-to address; invoice date, invoice number, and payment term; County contract number; pricing per the Agreement; applicable taxes; and total cost.

Contractor and County shall make reasonable efforts to resolve all invoicing disputes within seven (7) days.

13. AVAILABILITY OF FUNDING

The County's obligation for payment of any contract beyond the current fiscal year end is contingent upon the availability of funding and upon appropriation for payment to the Contractor. No legal liability on the part of the County shall arise for payment beyond June 30 of the calendar year.

14. PAYMENT

The County's standard payment term shall be Net 45, unless otherwise agreed to by the parties. Payment shall be due Net 45 days from the date of receipt and approval of correct and proper invoices.

Notwithstanding the standard payment term set forth above, the parties agree that the Payment Term for this Agreement shall be the term set forth in the Key Provisions section of the Agreement above. If the Payment Term is a prompt payment discount term, then payment shall be made accordingly. For example, if the Payment Term is 2.25% 10 Net 45, payment shall be due 10 days from the date the County receives and approves the correct and proper invoice, but no later than 45 days from that date, and the County would take a discount of 2.25% of the total amount of the invoice if the payment is made in 10 days. The parties also agree that notwithstanding the Payment Term set forth in the Key Provisions section of the Agreement, that at any time during the contract term, either party may initiate an early payment discount on an invoice-by-invoice basis utilizing the Dynamic Discounting functionality of the Ariba Network. Contractor must have a registered account on the Ariba Network to utilize this functionality.

Payment is deemed to have been made on the date the County mails the warrant or initiates the electronic fund transfer.

15. OTHER PAYMENT PROVISIONS

Notwithstanding anything to the contrary, County shall not make payments prior to receipt of service or goods (i.e. the County will not make "advance payments"). Unless specified in writing in an individual purchase order, the County will not accept partial delivery with respect to any purchase order. Any acceptance of partial delivery shall not waive any of County's rights on an ongoing basis.

Sales tax shall be noted separately on every invoice. Items that are not subject to sales tax shall be clearly identified.

Contractor shall be responsible for payment of all state and federal taxes assessed on the compensation received under this Purchase Order and such payment shall be identified under the Contractor's federal and state identification number(s).

The County does not pay Federal Excise Taxes (F.E.T). The County will furnish an exemption certificate in lieu of paying F.E.T. Federal registration for such transactions is: County #94-730482K. Contractor shall not Agreement 5500002836
Between the County of Santa Clara and Cardinal Health

charge County for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose, unless expressly authorized by the County.

16. LATE PAYMENT CHARGES OR FEES

The Contractor acknowledges and agrees that the County will not pay late payment charges.

17. DISALLOWANCE

In the event the Contractor receives payment for goods or services, which payment is later disallowed by the County or state or federal law or regulation, the Contractor shall promptly refund the disallowed amount to the County upon notification. At County's option, the County may offset the amount disallowed from any payment due to the Contractor under any contract with the County.

18. TERMINATION FOR CONVENIENCE

The County may terminate this Agreement or any contract release purchase order at any time for the convenience of the County by giving at least thirty (30) days written notice prior to the intended date of termination specifying the effective date and scope of such termination. If County determines that the Contractor's actions contribute to the curtailment of an essential service or pose an immediate threat to life, health or property, County may terminate this Agreement immediately without penalty upon issuing either oral or written notice to the Contractor and without any opportunity to cure.

In no event shall the County be liable for costs incurred by the Contractor as a result of the termination or any loss of profits on the resulting order or portion thereof so terminated.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other materials (collectively referred to as "materials") prepared by Contractor under this Agreement contract release purchase order shall become the property of the County and shall be promptly delivered to the County. Upon receipt of such materials, County shall pay the Contractor as full compensation for performance, the unit or pro rata price for the then-accepted portion of goods and/or services.

19. TERMINATION FOR CAUSE

County may terminate this Agreement or any contract release purchase order, in whole or in part, for cause upon thirty (30) days written notice to Contractor. For purposes of this Agreement, cause includes, but is not limited to, any of the following: (a) material breach of this Agreement or any contract release purchase order by Contractor, (b) violation by Contractor of any applicable laws or regulations; (c) assignment or delegation by Contractor of the rights or duties under this Agreement without the written consent of County or (d) less than perfect tender of delivery or performance by Contractor that is not in strict conformance with terms, conditions, specifications, covenants, representations, warranties or requirements in this Agreement or any contract release purchase order.

In the event of such termination, the Contractor shall be liable for any costs incurred by the County because of Contractor's default. The Contractor shall promptly reimburse the County for the full amount of its liability, or, at County's option, the County may offset such liability from any payment due to the Contractor under any contract or contract release purchase order with the County.

If, after notice of termination under the provisions of this clause, it is determined for any reason that the Contractor was not in default under this provisions of this clause, the County has the option to make its notice of termination pursuant to the Termination for Convenience clause and the rights and obligations of the parties would be in accordance with that provision.

In lieu of terminating immediately upon contractor's default, County may, at its option, provide written notice specifying the cause for termination and allow Contractor 10 days (or other specified time period by the County) to cure. If, within 10 days (or other specified time) after the County has given the Contractor such notice, Contractor has not cured to the satisfaction of the County, or if the default cannot be reasonably

cured within that time period, County may terminate this Agreement at any time thereafter. County shall determine whether Contractor's actions constitute complete or partial cure. In the event of partial cure, County may, at its option, decide whether to (a) give Contractor additional time to cure while retaining the right to immediately terminate at any point thereafter for cause; or (b) terminate immediately for cause.

20. TERMINATION FOR BANKRUPTCY

If Contractor is adjudged to be bankrupt or should have a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of Contractor's insolvency, the County may terminate this Agreement immediately without penalty. For the purpose of this Section, bankruptcy shall mean the filing of a voluntary or involuntary petition of bankruptcy or similar relief from creditors; insolvency; the appointment of a trustee or receiver, or any similar occurrence reasonably indicating an imminent inability to perform substantially all of the party's duties under this Agreement.

21. BUDGETARY CONTINGENCY

Performance and/or payment by the County pursuant to this Agreement is contingent upon the appropriation of sufficient funds by the County for services covered by this Agreement. If funding is reduced or deleted by the County for services covered by this Agreement, the County may, at its option and without penalty or liability, terminate this Agreement or offer an amendment to this Agreement indicating the reduced amount.

22. DISENTANGLEMENT

Contractor shall cooperate with County and County's other contractors to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Contractor shall cooperate with County's efforts to ensure that there is no interruption of work required under the Agreement and no adverse impact on the supply of goods, provision of services or the County's activities. Contractor shall return to County all County assets or information in Contractor's possession.

For any software programs developed for use under the County's Agreement, Contractor shall provide a nonexclusive, nontransferable, fully-paid, perpetual, irrevocable, royalty-free worldwide license to the County, at no charge to County, to use, copy, and modify, all work or derivatives that would be needed in order to allow County to continue to perform for itself, or obtain from other providers, the services as the same might exist at the time of termination.

County shall be entitled to purchase at net book value those Contractor assets used for the provision of services to or for County, other than those assets expressly identified by the parties as not being subject to this provision. Contractor shall promptly remove from County's premises, or the site of the work being performed by Contractor for County, any Contractor assets that County, or its designee, chooses not to purchase under this provision.

Contractor shall deliver to County or its designee, at County's request, all documentation and data related to County, including, but not limited to, the County Data and client files, held by Contractor, within sixty (60) days of the request, and after return of same, Contractor shall destroy all copies thereof not turned over to County, all at no charge to County.

23. DISPUTES

Except as otherwise provided in this Agreement, any dispute arising under this contract that is not disposed of by agreement shall be decided by the Director of Procurement or designee, who shall furnish the decision to the Contractor in writing. The decision of the Director of Procurement or designee shall be final and conclusive. The Contractor shall proceed diligently with the performance of the contract pending the Director of Procurement's decision. The Director of Procurement or designee shall not be required to decide issues that are legal or beyond his or her scope of expertise,

24. ACCOUNTABILITY

Contractors will be the primary point of contact for the manufacturer, deliverer or any subcontractors and assume the responsibility of all matters relating to the purchase, including those involving the manufacturer and deliverer or any subcontractor, as well as payment issues. If issues arise, the Contractor must take immediate action to correct or resolve the issues.

25. NO ASSIGNMENT, DELEGATION OR SUBCONTRACTING WITHOUT PRIOR WRITTEN CONSENT

Contractor may not assign any of its rights, delegate any of its duties or subcontract any portion of its work or business under this Agreement or any contract release purchase order without the prior written consent of County. No assignment, delegation or subcontracting will release Contractor from any of its obligations or alter any of its obligations to be performed under the Agreement. Any attempted assignment, delegation or subcontracting in violation of this provision is voidable at the option of the County and constitutes material breach by Contractor.

As used in this provision, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance, or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

26. MERGER AND ACQUISITION

The terms of this Agreement will survive an acquisition, merger, divestiture or other transfer of rights involving Contractor. In the event of an acquisition, merger, divestiture or other transfer of rights Contractor must ensure that the enquiring entity or the new entity is legally required to:

- A. Honor all the terms negotiated in this Agreement and any pre-acquisition or pre-merger Agreement between Contractor and the County, including but not limited to a) established pricing and fees; b) guaranteed product support until the contract term even if a new product is released; and c) no price escalation during the term of the contract.
- B. If applicable, provide the functionality of the software in a future, separate or renamed product, if the acquiring entity or the new entity reduces or replaces the functionality, or otherwise provide a substantially similar functionality of the current licensed product. The County will not be required to pay any additional license or maintenance fee.
- C. Give 30-days written notice to the County following the closing of an acquisition, merger, divestiture or other transfer of right involving Contractor.

27. COMPLIANCE WITH ALL LAWS & REGULATIONS

Contractor shall comply with all laws, codes, regulations, rules and orders (collectively, "Regulations") applicable to the goods and/or services to be provided hereunder. Contractor's violation of this provision shall be deemed a material default by Contractor, giving County a right to terminate the contract. Examples of such Regulations include but are not limited to California Occupational Safety and Health Act of 1973, Labor Code §6300 et. seq. the Fair Packaging and Labeling Act. and the standards and regulations issued there under. Contractor agrees to indemnify and hold harmless the County for any loss, damage, fine, penalty, or any expense whatsoever as a result of Contractor's failure to comply with the act and any standards or regulations issued there under.

28. FORCE MAJEURE

Neither party shall be liable for failure of performance, nor incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused by events, occurrences, or causes beyond the reasonable control and without negligence of the parties. Such events, occurrences, or causes will include Acts of God/Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, riots, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, lockout, blockage, embargo, labor dispute, strike, interruption or failure of electricity or telecommunication service.

Each party, as applicable, shall give the other party notice of its inability to perform and particulars in reasonable detail of the cause of the inability. Each party must use best efforts to remedy the situation and remove, as soon as practicable, the cause of its inability to perform or comply.

The party asserting *Force Majeure* as a cause for non-performance shall have the burden of proving that reasonable steps were taken to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

The County shall reserve the right to terminate this Agreement and/or any applicable order or contract release purchase order upon non-performance by Contractor. The County shall reserve the right to extend the agreement and time for performance at its discretion.

29. CONFLICTS OF INTEREST

Contractor shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County.

In accepting this Agreement, Contractor covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that, in the performance of this Agreement, it will not employ any contractor or person having such an interest. Contractor, including but not limited to contractor's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Contractor shall, upon execution of this Agreement, provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Contractor's employees, agents and subcontractors, that could be substantively involved in "making a governmental decision" or "serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position," (2 CCR 18701(a)(2)), as part of Contractor's service to the County under this Agreement. Contractor shall immediately notify the County of the names and email addresses of any additional individuals later assigned to provide such service to the County under this Agreement in such a capacity. Contractor shall immediately notify the County of the names of individuals working in such a capacity who, during the course of the Agreement, end their service to the County.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Contractor shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws

and regulations listed in subsection (A) including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this Agreement, annually by April 1, and within 30 days of their termination of service pursuant to this Agreement.

30. INDEPENDENT CONTRACTOR

Contractor shall supply all goods and/or perform all services pursuant to this Agreement as an independent contractor and not as an officer, agent, servant, or employee of County. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the County and Contractor. No person performing any services and/or supplying all goods shall be considered an officer, agent, servant, or employee of County, nor shall any such person be entitled to any benefits available or granted to employees of the County.

Contractor is responsible for payment to sub-contractors and must monitor, evaluate, and account for the sub-contractor(s) services and operations.

31. INSURANCE

Contractor shall maintain insurance coverage pursuant to the exhibit setting forth insurance requirements, if such exhibit is attached to the Agreement.

32. DAMAGE AND REPAIR BY CONTRACTOR

Any and all damages caused by Contractor's negligence or operations shall be repaired, replaced or reimbursed by Contractor at no charge to the County. Repairs and replacements shall be completed within 72 hours of the incident unless the County requests or agrees to an extension or another time frame. The clean up of all damage related to accidental or intentional release of any/all non-hazardous or hazardous material (e.g. hydraulic fluid, fuel, grease, etc.) from Contractor's vehicles or during performance shall be the responsibility of the Contractor. All materials must be cleaned up in a manner and time acceptable to County (completely and immediately to prevent potential as well as actual environmental damage). Contractor must immediately report each incident to the County's Director of Procurement or designee. Damage observed by Contractor, whether or not resulting from Contractor's operations or negligence shall be promptly reported by Contractor to County. County may, at its option, approve and/or dictate the actions that are in County's best interests.

33. LIENS, CLAIMS, AND ENCUMBRANCES AND TITLE

The Contractor represents and warrants that all the goods and materials ordered and delivered are free and clear of all liens, claims or encumbrances of any kind. Title to the material and supplies purchased shall pass directly from Contractor to County at the F.O.B. point, subject to the right of County to reject upon inspection.

34. ASSIGNMENT OF CLAYTON ACT, CARTWRIGHT ACT CLAIMS

Contractor hereby assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County pursuant to this Agreement.

35. INDEMNITY

County shall not be liable for, and Contractor shall defend, indemnify and hold harmless County and the employees and agents of County (collectively, "County Parties") against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including without limitation attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to and arising either directly or indirectly from any act, error, omission or negligence of Contractor or its contractors, licensees, agents, servants or employees, excepting only Claims caused by the sole negligence or willfulness of County Parties. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under its agreement with the County.

36. INTELLECTUAL PROPERTY INDEMNITY

Contractor represents and warrants for the benefit of the County and its users that it is the exclusive owner of all rights, title and interest in the product or services to be supplied. Contractor shall, at its own expense, indemnify, defend, settle, and hold harmless the County and its agencies against any claim or potential claim that any good, (including software) and/or service, or County's use of any good (including software) and/or service, provided under this Agreement infringes any patent, trademark, copyright or other proprietary rights, including trade secret rights. Contractor shall pay all costs, damages and attorneys' fees that a court awards as a result of any such claim.

37. WARRANTY

Any goods and/or services furnished under this Agreement shall be covered by the most favorable commercial warranties that Contractor gives to any of its customers for the same or substantially similar goods and/or services. Any warranties so provided shall supplement, and shall not limit or reduce, any rights afforded to County by any clause in this Agreement, any applicable Uniform Commercial Code warranties, including, without limitation, Implied Warranty of Merchantability and Implied Warranty of Fitness for a Particular Purpose as well as any other express warranty.

Contractor expressly warrants that all goods supplied shall be new, suitable for the use intended, of the grade and quality specified, free from all defects in design, material and workmanship, in conformance with all samples, drawings, descriptions and specifications furnished by the County, in compliance with all applicable federal, state and local laws and regulations and free of liens, claims and encumbrances. Contractor warrants that all services shall strictly conform to the County's requirements.

Contractor shall immediately replace or repair any good not conforming to any warranty, or provide services to conform to County's requirements. If after notice, Contractor fails to repair or replace goods, or to provide services to conform to County's requirements, Contractor shall promptly refund to County the full purchase price paid by the County. This remedy is non-exclusive of other remedies and rights that may be exercised by the County. Claims for damages may include direct damages, such as cost to repair, as well as incidental and consequential damages.

During the provision of goods and services, Contractor may not disclaim any warranty, express or implied, and any such disclaimer shall be void. Additionally, the warranties above shall not be deemed to exclude Contractor's standard warranties or other rights and warranties that the County may have or obtain.

38. COOPERATION WITH REVIEW

Contractor shall cooperate with County's periodic review of Contractor's performance. Contractor shall make itself available onsite to review the progress of the project and Agreement, as requested by the County, upon reasonable advanced notice.

Contractor agrees to extend to the County or his/her designees and/or designated auditor of the County, the right to monitor or otherwise evaluate all work performed and all records, including service records and

procedures to assure that the project is achieving its purpose, that all applicable County, State, and Federal regulations are met, and that adequate internal fiscal controls are maintained.

39. AUDIT RIGHTS

Pursuant to California Government Code Section 8546.7, the parties acknowledge and agree that every contract involving the expenditure of public funds in excess of \$10,000 may be subject to audit by the State Auditor.

All payments made under this Agreement shall be subject to an audit at County's option, and shall be adjusted in accordance with said audit. Adjustments that are found necessary as a result of auditing may be made from current billings.

The Contractor shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in any County audits. The Contractor shall pay to County the full amount of any audit determined to be due as a result of County audit exceptions. This provision is in addition to other inspection and access rights specified in this Agreement.

40. ACCESS AND RETENTION OF RECORDS AND PROVISION OF REPORTS

Contractor shall maintain financial records adequate to show that County funds paid were used for purposes consistent with the terms of the contract between Contractor and County. Records shall be maintained during the terms of the Agreement and for a period of four (4) years from its termination, or until all claims have been resolved, whichever period is longer, unless a longer period is required under any contract.

All books, records, reports, and accounts maintained pursuant to the Agreement, or related to the Contractor's activities under the Agreement, shall be open to inspection, examination, and audit by County, federal and state regulatory agencies, and to parties whose Agreements with the County require such access. County shall have the right to obtain copies of any and all of the books and records maintained pursuant to the Agreement, upon the payment of reasonable charges for the copying of such records.

Contractor shall provide annual reports that include, at a minimum, (i) the total contract release purchase order value for the County as a whole and individual County departments, and (ii) the number of orders placed, the breakdown (by customer ID/department and County) of the quantity and dollar amount of each product and/or service ordered per year. Annual reports must be made available no later than 30 days of the contract anniversary date unless otherwise requested.

Contractor shall also provide quarterly reports to the County that show a breakdown by contract release purchase order (i) the order date (ii) ship date (iii) estimated arrival date (iv) actual arrival date (v) list of products, services and maintenance items and (vi) the number and details of problem/service calls and department name that each such call pertains to (including unresolved problems). Quarterly reports must be made available to the County in electronic format, two (2) business days after the end of each quarter unless otherwise requested.

41. ACCESS TO BOOKS AND RECORDS PURSUANT TO THE SOCIAL SECURITY ACT

Access to Books and Records: If and to the extent that, Section 1861 (v) (1) (1) of the Social Security Act (42 U.S.C. Section 1395x (v) (1) (1) is applicable, Contractor shall maintain such records and provide such information to

County, to any payor which contracts with County and to applicable state and federal regulatory agencies, and shall permit such entities and agencies, at all reasonable times upon request, to access books, records and other papers relating to the Agreement hereunder, as may be required by applicable federal, state and local laws, regulations and ordinances. Contractor agrees to retain such books, records and information for a period of at least four (4) years from and after the termination of this Agreement. Furthermore, if Contractor carries out any of its duties hereunder, with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, through a subcontract with a related organization, such subcontract

shall contain these same requirements. This provision shall survive the termination of this Agreement regardless of the cause giving rise to the termination.

42. COUNTY NO-SMOKING POLICY

Contractor and its employees, agents and subcontractors, shall comply with the County's No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

43. FOOD AND BEVERAGE STANDARDS

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by Contractor with County funds for County-sponsored meetings or events.

If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low fat and low calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, Contractor shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high calorie desserts; (3) attempt to accommodate special, dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and the Contractor should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans-fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County's nutritional criteria are (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, provided that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. Sugar-sweetened beverages shall not be provided.

44. NON-DISCRIMINATION

Contractor shall comply with all applicable Federal, State, and local laws and regulations, including Santa Clara County's policies, concerning nondiscrimination and equal opportunity in contracting. Such laws include, but are not limited to, the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (§§ 503 and 504); California Fair Employment and Housing Act (Government Code §§ 12900 et seq.); and California Labor Code §§ 1101 and 1102. Contractor shall not discriminate against any employee, subcontractor or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status. Contractor's violation of this provision shall be deemed a material default by Contractor giving County a right to terminate the contract for cause.

45. DEBARMENT

Contractor represents and warrants that it, its employees, contractors, subcontractors or agents (collectively "Contractor") are not suspended, debarred, excluded, or ineligible for participation in Medicare, Medi-Cal or any other federal or state funded health care program, if applicable, or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor must within 30 calendar days advise the County if, during the term of this Agreement, Contractor becomes suspended, debarred, excluded or ineligible for participation in Medicare, Medi-Cal or any other federal or state funded health care program, as defined by 42. U.S.C. 1320a-7b(f), or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor will indemnify, defend and hold the County harmless for any loss or damage resulting from the conviction, debarment, exclusion or ineligibility of the Contractor.

46. CALIFORNIA PUBLIC RECORDS ACT

The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Contractor's proprietary information is contained in documents or information submitted to County, and Contractor claims that such information falls within one or more CPRA exemptions, Contractor must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the County will make best efforts to provide notice to Contractor prior to such disclosure. If Contractor contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the County is required to respond to the CPRA request. If Contractor fails to obtain such remedy within the time the County is required to respond to the CPRA request, County may disclose the requested information.

Contractor further agrees that it shall defend, indemnify and hold County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from denial by County of a CPRA request for information arising from any representation, or any action (or inaction), by the Contractor.

47. POLITICAL REFORM ACT DISCLOSURE REQUIREMENT

Contractor, including but not limited to contractor's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under the Contract, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Act are applicable to any individual providing service under the Contract, Contractor shall, upon execution of the Contract, provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Contractor's employees, agents and subcontractors, that could be substantively involved in "making a governmental decision" or "serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position," (2 CCR 18701(a)(2)), as part of Contractor's service to the County under the Contract. Contractor shall ensure that such individuals file Statements of Economic Interests within 30 days of commencing service under the Contract, annually by April 1, and within 30 days of their termination of service under the Contract.

48. SEVERABILITY

Should any part of the Agreement between County and the Contractor or any individual contract release purchase order be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or

unenforceability shall not affect the validity of the remainder of the Agreement or any individual contract release purchase order which shall continue in full force and effect, provided that such remainder can, absent the excised portion, be reasonably interpreted to give the effect to the intentions of the parties.

49. NON-WAIVER

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement will be effective unless it is in writing and signed by County. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless the writing signed by the County so specifies.

50. USE OF COUNTY'S NAME FOR COMMERCIAL PURPOSES

Contractor may not use the name of the County or reference any endorsement from the County in any fashion for any purpose, without the prior express written consent of the County as provided by the Director of Procurement or designee.

51. HEADINGS AND TITLES

The titles and headings in this Agreement are included principally for convenience and do not by themselves affect the construction or interpretation of any provision in this Agreement, nor affect any of the rights or obligations of the parties to this Agreement.

52. HANDWRITTEN OR TYPED WORDS

Handwritten or typed words have no greater weight than printed words in the interpretation or construction of this Agreement.

53. AMBIGUITIES

Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

54. ENTIRE AGREEMENT

This Agreement and its Exhibits constitute the final, complete and exclusive statement of the terms of the agreement between the parties. It incorporates and supersedes all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

55. EXECUTION & COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. The parties agree that this Agreement, its amendments, and ancillary agreements to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered a method described under the Contract Execution provision herein.

56. NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested; when sent by overnight carrier; or upon email confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Notices shall be addressed to the individuals identified in the Key Provisions of the Agreement as the County Contract Administrator and the Supplier Contact. Each party may designate a different person and address by sending written notice to the other party, to be effective no sooner than ten (10) days after the date of the notice.

57. ACCOUNT MANAGER

Contractor must assign an Account Manager to the County upon execution of the Agreement to facilitate the contractual relationship, be fully responsible and accountable for fulfilling the County's requirements. Contractor represents and warrants that such person will ensure that the County receives adequate pre- and post-sales support, problem resolution assistance and required information on a timely basis.

58. SURVIVAL

All representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of their Agreement, will survive the termination of this Agreement.

59. GOVERNING LAW, JURISDICTION AND VENUE

This Agreement shall be construed and interpreted according to the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions shall be exclusively vested in state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

60. CONTRACT EXECUTION

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.

61. THIRD PARTY BENEFICIARIES

This agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties

62. AUTHORITY

Each party executing the Agreement on behalf of such entity represents that he or she is duly authorized to execute and deliver this Agreement on the entity's behalf, including the entity's Board of Directors or Executive Director. This Agreement shall not be effective or binding unless it is in writing and approved by the County Director of Procurement, or authorized designee, as evidenced by their signature as set forth in this Agreement.

63. WAGE THEFT PREVENTION

(1) **Compliance with Wage and Hour Laws:** Contractor, and any subcontractor it employs to complete work under this Agreement, must comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or Living Wage Ordinance.

(2) **Final Judgments, Decisions, and Orders:** For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, a local enforcement agency, or any other government entity tasked with the investigation and enforcement of wage and hour laws.

(3) **Prior Judgments against Contractor and/or its Subcontractors:** BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS, OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING—IN THE FIVE YEARS PRIOR TO EXECUTING THIS AGREEMENT—THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH—OR HAS REACHED AGREEMENT WITH THE COUNTY REGARDING THE MANNER IN WHICH IT WILL SATISFY—ANY SUCH JUDGMENTS, DECISIONS, OR ORDERS.

(4) **Judgments During Term of Contract:** If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision, or order finding that Contractor or any subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed, Contractor must inform the Office of the County Executive-Countywide Contracting, no more than 15 days after the judgment, decision, or order becomes final or of learning of the final judgment, decision or order. Contractor and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the Office of the County Executive-Countywide Contracting with documentary evidence of compliance with the final judgment, decision or order within 5 days of satisfying the final judgment, decision, or order. The County reserves the right to require Contractor to enter into an agreement with the County regarding the manner in which any such final judgment, decision or order will be satisfied.

(5) **County's Right to Withhold Payment:** Where Contractor or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision, or order of a court or government agency, the County reserves the right to withhold payment to Contractor until such judgment, decision, or order has been satisfied in full.

(6) **Material Breach:** Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for termination of this Agreement and/or any other remedies available under this Agreement and/or law.

(7) **Notice to County Related to Wage Theft Prevention:** Notice provided to the Office of the County Executive as required under this Section shall be addressed to: Office of the County Executive—Countywide Contracting; 70 West Hedding Street; East Wing, 11th Floor; San José, CA 95110. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

Exhibit B
Price Summary and Compensation Plan

LINE	DESCRIPTION	UOM	MFR. PART #	CARDINAL PART #	PRICE
1	Sakura Tissue Tek xPress X120 Rapid Tissue Processor, Mfr/Product. # 7720	1	7720	SF7720	\$192,595.00
	Freight	1			\$1,764.00
2	Sakura Uninterrupted Power Supply (UPS), 1 Hour, Xpress® x50 and AutoTEC®	1	7011	SF7011	\$6,995.00
	Freight	1			\$662.00
	Total				\$202,016.00

LINE	SERVICE REQUIREMENTS	UOM	PRICE
1	Extended Service and Maintenance after one (1) year Warranty for the Rapid Tissue Processor	Year 1	\$18,124.00
2		Year 2	\$18,124.00
3		Year 3	\$18,124.00
4		Year 4	\$18,124.00
5	TOTAL		\$72,496.00

Warranty

One (1) year standard warranty is included at no charge and will commence after delivery and installation of the Sakura Tissue Tek xPress X120 Rapid Tissue Processor is fully executed.

Upgrades

All upgrades to the system and service for the upgrade are to be made available to the County. Instrument upgrades must be mutually agreed upon and executed in the form of a contract amendment.

Exhibit C
Scope of Work

1. **Overview**

Contractor shall deliver, install, and make operational for validation/acceptance testing the Sakura Tissue Tek xPress X120 Rapid Tissue Processor to the County as listed at the price detailed in Exhibit B.

2. **Agreement Term Pricing**

- a. All pricing per Exhibit B, Price Summary and Compensation Plan

3. **Deliveries/Installation/Training**

- a. Shipment, delivery and installation of the instruments must be completed within 2-4 weeks after receipt of purchase order and must reference County Purchase Order on packing slips and outside of cartons.
Unless otherwise specified in writing, all shipments by Contractor to County will be F.O.B. point of destination, prepaid and allowed. Contractor is responsible for freight and handling charges on instruments only.
- b. Delivery- White Glove to Laboratory includes inside delivery, unpackaging, set-up in room of choice, removal of all debris upon completion is included in the pricing in Exhibit B. Pallets must be plastic and at no additional cost to the County. No deliveries will be accepted on wooden pallets and any refusal of delivery will be at the expense of the Contractor to re-deliver on a plastic pallet.

Equipment deliveries and installation will be conducted during normal business hours:
SCVMC Property Control
800 Thornton Way
San Jose, CA 95128

- c. Monday to Friday, 7:00am till 1:00pm, closed on weekends and County holidays.
Equipment delivery will be coordinated with the County prior to the scheduling for the delivery of the instruments.
- d. Vendor shall invoice the County for the equipment after receiving a signed acceptance certificate from the County.

4. **Acceptance Testing**

- a. Contractor will be responsible for providing factory trained personnel to provide initial equipment comprehensive training to the County Laboratory staff and ensure their competency on using the instrument. The number of County Laboratory staff attending initial training will be based upon a number mutually agreed upon by both parties and will be at no charge to the County.
- b. During the initial setup and configuration, Cardinal or designee will provide LIS technical assistance in order to establish network connectivity, test mapping, and upload functionality to Beaker via Data Innovations Instrument Manager.
- c. Contractor will also provide authorized trained personnel to aide in the Contractor validation and SCVMC Testing and Equipment Validation.

- d. **Contractor Validation:** Contractor will provide 20 tests per assay type, along with QC material, and personnel to demonstrate that the installed system meets or exceeds the proposer's published performance specifications for basic operation. SCVMC acknowledges that any patient samples required by the vendor for validation purposes will be provided by SCVMC at its expense. All validation data will be documented and presented to the Director of Laboratories for approval. When Cardinal, Inc installs each piece of Equipment, Customer agrees to inspect it promptly to determine if it is in good working order.

- e. **SCVMC Testing and Equipment Validation:** Both parties agree that the Standard of Work (to include Precision, Accuracy, Linearity and Carry Over Studies demonstrated is the basis for determining completion and therefore acceptance. Assay parameters validated may include accuracy, precision, analytical sensitivity, and linearity (reportable range), when not done so in Vendor Validation. These parameters will be compared to vendor's provided application specifications such as FDA submission documents, which must be met or exceeded. In the event that County of Santa Clara SCVMC, Department of Pathology & Laboratory Medicine personnel are unable to meet the application specifications, Contractor will provide application support to assist SCVMC personnel in achieving assay performance equal to or exceeding application data. Upon completion of this testing, the data will be presented to then SCVMC Director of Laboratories for acceptance. Upon the Director's acceptance, via County of Santa Clara provided "Installation and Acceptance Certificate"(Attachment A" the instrument will be placed into routine operation.

5. **Service / Maintenance Coverage includes:**

- a. 1 PM Service
 - All parts, travel and labor associated with a repair call
 - Technical Support Assistance: 24/7 including weekends and holidays
 - Unlimited Emergency Calls

- b. Contractor will provide support of In-House Instrument Service Dept and Tech Support Agents, they must be Authorized Factory Trained Technicians.

- c. Field Tech Specialist assistance at no charge for AutoTEC, Xpress Instruments, processing and diagnosing.

48 hour onsite response time from time of call
Sakura-Customer Service/Technical Support 800-725-8723

PM's will be prescheduled at least 30-60 days in advance, Contractor will contact County Department to schedule.

PM Service Includes:

- PM kit and Service Checklist for the Tech to follow
- Labor and travel for the Tech.

Include PM Service coverage in contract as there is 1 PM Service provided annually under the Standard Agreement.

Standard Agreement – Contractor covers the instruments for any repairs during that time, including performing a PM service every year of the agreement.

8. **Warranty:**

- a. Warranty period is for Twelve (12) months at no charge to the County.
- b. One (1) year minimum provided by manufacturer Sakura to include one (1) preventive maintenance visit annually. Preventative Maintenance (PM) includes, but is not limited to equipment cleaning and diagnostic checks of internal equipment components to maintain proper equipment performance.
- c. Contractor will provide intervention within 24 hours of instrument break down If Contractor receives a message from the County after hours, a return call should be made on the next business day.
- d. Contractor will provide replacement parts and labor at no charge. Contractor will provide all maintenance at no charge.
- e. Contractor will provide free technical assistance by Cardinal or designee by telephone or web video/audio remote connections and software upgrades.

6. **Laboratory Information Services:**

- a. As specified under the Acceptance Testing Section, the initial setup and configuration, Cardinal via Sakura will provide LIS technical assistance in order to establish network connectivity, test mapping, and upload functionality to Beaker via Data Innovations Instrument Manager.
- b. Contractor will provide free technical assistance by Cardinal via Sakura or designee by telephone or web video/audio remote connections and software upgrades. This technical support will cover instrument functionality, LIS connectivity and test mapping, as well as end user technical support.

7. **Invoicing:**

Contractor will invoice the extended service on an annual basis. A proper invoice shall include the following information:

- a. Unique Invoice Number
- b. Invoice Date
- c. Purchase Order Number
- a. Name of Ordering Department
- b. Name of County Staff Member Placing Order
- c. Date Order Placed
- d. Address to Which Goods Were Delivered
- e. List/Description of Item(s) Furnished
- f. Quantity, Unit Price and Extended Price for Each Item
- g. Sales Tax Due
- h. Total Invoice Amount

- d. All invoices shall be sent to:

Santa Clara Valley Health and Hospital System (SCVHHS)
Accounts Payable
2325 Enborg Lane, Suite 380
San Jose, CA 95128
Attention: Accounting Department

The Contractor acknowledges and agrees to work with the County Accounts Payable Department on any late payment issues and at no point shall discontinue service or product delivery.

ATTACHMENT A
INSTALLATION AND ACCEPTANCE CERTIFICATE

Re: County Agreement Number: _____ Dated: _____, 20_____

Equipment Model and Serial Number(s): _____

On behalf of Santa Clara Valley Health & Hospital System (SCVHHS), Valley Medical Center (VMC), Department of Pathology & Laboratory Medicine, County of Santa Clara, I hereby acknowledge complete and satisfactory ACCEPTANCE of the equipment described in the above referenced agreement. I understand that based upon the representations made by us herein, the County of Santa Clara is agreeable to initiate payment to Cardinal Health for said equipment. Invoicing, warranty and contract commencement shall begin as agreed to in the referenced County of Santa Clara agreement.

Both parties agree that the Standard of Work, (Precision, Accuracy, Linearity, and Carry-Over Studies demonstrated) which is an integral part of the proposal document, is the basis for determining completion and therefore acceptance. Both parties agree that we have read and understand the Standard of Work, and that said equipment has met manufacturer's specifications.

Santa Clara Valley Health & Hospital System (SCVHHS)
Valley Medical Center (VMC), Department of Pathology & Laboratory Medicine
County of Santa Clara
751 S. Bascom Ave.
San Jose, CA 95128

Director of Laboratory and Pathology Signature: _____

Title: _____ Date: _____

Vendor Acknowledgement of the above

Cardinal Health
700 Vaughn Rd
Dixon, CA 95620

By: _____

Title: _____

Original signed copy must be submitted to SCVMC Laboratory by mail or by fax
(408) 938-4539

Exhibit D
Insurance

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. **Commercial General Liability Insurance** - for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence - \$1,000,000
 - b. General aggregate - \$2,000,000

- c. Products/Completed Operations aggregate - \$2,000,000
- d. Personal Injury - \$1,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Products/Completed
- c. Personal Injury liability
- d. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy.

Public Entities may also be added to the additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one hundred thousand dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one hundred thousand dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.

- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractor's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.



County of Santa Clara

Office of the County Executive
Procurement Department

2310 N. First Street, Suite 201
San Jose, CA 95131-1040
Telephone 408-491-7400 • Fax 408-491-7496

FIRST AMENDMENT TO AGREEMENT NO. 5500002836 BY AND BETWEEN COUNTY OF SANTA CLARA AND CARDINAL HEALTH

This is the First Amendment to the Agreement No. 5500002836 between the County of Santa Clara (County) and Cardinal Health (Contractor) entered into on November 22, 2016 to provide Sakura Tissue Tek xPress x 120 Rapid Tissue processor with service and maintenance for the County.

This Agreement is amended as follows effective April 26, 2019:

1. Key Provision, **TOTAL AGREEMENT VALUE**, on page 2 of the Agreement, is revised to read: "The total not to exceed value of this Agreement is \$600,000.00, which represents an increase of \$300,000.00 from the prior not to exceed value of \$300,000.00."

Contractor understands that this not to exceed value does not represent a commitment by County to Contractor.

2. Replace **Exhibit B Price Summary and Compensation Plan** with **Exhibit B1 Price Summary and Compensation Plan**, attached hereto and incorporated herein by this reference.
3. Add the following provisions to the Agreement:

LIVING WAGE

Unless otherwise exempted or prohibited by law or County policy, Contractors that contract with the County to provide Direct Services and work within the geographical limits of Santa Clara County, as defined in County of Santa Clara Ordinance Code Division B36 ("Division B36") and Board Policy section 5.5.5.5 ("Living Wage Policy"), and their subcontractors, where the contract value is \$100,000 or more, must comply with Division B36 and the Living Wage Policy and compensate their employees in accordance with Division B36 and the Living Wage Policy. Compliance and compensation for purposes of

Board of Supervisors: Mike Wasserman, Cindy Chavez, Dave Cortese, Susan Ellenberg, S. Joseph Simitian
County Executive: Jeffrey V. Smith

First Amendment to Agreement No. 5500002836 Between County of Santa Clara and Cardinal Health

this provision includes, but is not limited to, components relating to fair compensation, earned sick leave, paid jury duty, fair workweek, worker retention, fair chance hiring, targeted hiring, local hiring, protection from retaliation, and labor peace. If Contractor and/or a subcontractor violate this provision, the Board of Supervisors or its designee may, at its sole discretion, take responsive actions including, but not limited to, the following:

- a) Suspend, modify, or terminate the Direct Services Contract.
- b) Require the Contractor and/or Subcontractor to comply with an appropriate remediation plan developed by the County.
- c) Waive all or part of Division B36 or the Living Wage Policy.

This provision shall not be construed to limit an employee's rights to bring any legal action for violation of the employee's rights under Division B36 or any other applicable law. Further, this provision does not confer any rights upon any person or entity other than the Board of Supervisors or its designee to bring any action seeking the cancellation or suspension of a County contract. By entering into this contract, Contractor certifies that it is currently complying with Division B36 and the Living Wage Policy with respect to applicable contracts, and warrants that it will continue to comply with Division B36 and the Living Wage Policy with respect to applicable contracts

CONTRACTING PRINCIPLES

All entities that contract with the County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, shall be fiscally responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, all contractors shall: (1) comply with all applicable federal, state and local rules, regulations and laws; and upon County's reasonable written request at Contractor's corporate offices and during normal business hours, no more than one (1) audit request in any twelve (12) month period, (2) maintain financial records and make those records available; (3) provide to the County copies of any financial audits that have been completed during the term of the Agreement; and (4), provide the County reasonable access, through representatives of the Contractor, to facilities, financial and employee records that are related to the purpose of the Agreement, except where prohibited by federal or state laws, regulations or rules. The records referenced in (2)-(4) shall be provided to the County, subject to a mutually agreeable non-disclosure agreement. The County is a public agency subject to the California Public Records Act (CPRA); and Contractor further agrees that it shall defend, indemnify and hold County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from denial by County of a CPRA request for information arising from any representation, or any action (or inaction), by the Contractor. In the event that the County is required by judicial or administrative process to disclose the Contractor's information, it shall promptly notify and allow the Contractor a reasonable time to oppose such process.

SECURITY CISO COMPLIANCE

If applicable, Contractor shall follow the security standards, recommendations, conditions, and restrictions as provided by the County Information Security Office (CISO) for the entire term of the Agreement, and subject to the County's annual assessment and/or Independent penetration testing. For purposes of this section, the parties acknowledge this section is not applicable to the Products under this agreement. In the future if this applies, the parties will review the terms of this section to determine mutually agreed upon terms.

COUNTY DATA

"County Data" shall mean data and information received by Contractor from County. As between Contractor and County, all County Data shall remain the property of County.

- (1) Contractor shall not acquire any ownership interest in County Data. Contractor shall not, without County's written permission, use or disclose County Data other than in the performance of its obligations under this Agreement.
- (2) Contractor shall not, without County's written permission, use or disclose County Confidential Information other than in the performance of its obligations under this Agreement. As between Contractor and County, all County Confidential Information shall remain the property of the County. Contractor shall not acquire ownership interest in the County Confidential Information. "County Confidential Information" shall include all material non-public information, written or oral, disclosed, directly or indirectly, through any means of communication or observation by County to Contractor or any of its affiliates or representatives.
- (3) Contractor shall defend, indemnify and hold County harmless against any claim, liability, loss, injury or damage arising out of, or in connection with, the unauthorized use, access, and/or disclosure of information by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County.

COMPLIANCE WITH ALL LAWS AND REGULATIONS INCLUDING NONDISCRIMINATION, EQUAL OPPORTUNITY, AND WAGE THEFT PREVENTION

Contractor shall comply with all laws, codes, regulations, rules and orders (collectively, "Regulations") applicable to the goods and/or services to be provided hereunder. Contractor's violation of this provision shall be deemed a material default by Contractor, giving County a right to terminate the contract. Examples of such Regulations include but are not limited to California Occupational Safety and Health Act of 1973, Labor Code §6300 et. seq. the Fair Packaging and Labeling Act. and the standards and regulations issued there under. Contractor agrees to indemnify and hold harmless the County for any loss, damage, fine, penalty, or any expense whatsoever as a result of Contractor's failure to comply with the act and any standards or regulations issued there under.

(1) Compliance with All Laws. Contractor shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.

(2) Compliance with Non-Discrimination and Equal Opportunity Laws: Contractor shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for contractors on nondiscrimination and equal opportunity adopted May 14, 2017; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

(3) Compliance with Wage and Hour Laws: Contractor shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local Minimum Wage, Prevailing Wage, or Living Wage laws.

(4) Definitions: For purposes of this Section, the following definitions shall apply. A "Final Judgment, Decision, Determination, or Order" shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual's sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose's Office of Equality Assurance.

(5) Prior Judgments, Decisions or Orders against Contractor: BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL

JUDGMENTS, DECISIONS, DETERMINATIONS, OR ORDERS THAT (A) WERE ISSUED IN THE FIVE YEARS PRIOR TO EXECUTING THIS AGREEMENT BY A COURT OR INVESTIGATORY GOVERNMENT AGENCY AND (B) FOUND THAT CONTRACTOR VIOLATED AN APPLICABLE WAGE AND HOUR LAW OR PAY EQUITY LAW. CONTRACTOR FURTHER AFFIRMS THAT IT HAS SATISFIED AND COMPLIED WITH—OR HAS REACHED AGREEMENT WITH THE COUNTY REGARDING THE MANNER IN WHICH IT WILL SATISFY—ANY SUCH FINAL JUDGMENTS, DECISIONS, DETERMINATIONS, OR ORDERS.

(6) Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract: If at any time during the term of this Agreement, Contractor receives a Final Judgment, Decision, Determination, or Order rendered against it for violation of an applicable wage and hour Law or pay equity Law, then Contractor shall promptly satisfy and comply with any such Final Judgment, Decision, Determination or Order. Contractor shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment, Decision, Determination, or Order against it within 30 days of the Final Judgment, Decision, Determination, or Order becoming final or of learning of the Final Judgment, Decision, Determination, or Order, whichever is later. Contractor shall also provide any documentary evidence of compliance with the Final Judgment, Decision, Determination, or Order within 5 days of satisfying the Final Judgment, Decision, Determination, or Order. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.

(7) Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to Contractor's records, Contractor shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws with respect to employees who live and work within the geographical city limits of Santa Clara County. Upon the County's reasonable written request, Contractor shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records, that are related to the purpose of this Section, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during Contractor's normal business hours at Contractor's corporate offices upon no less than 10 business days' advance written notice no more than one (1) audit request in any twelve (12) month period. The County is a public agency subject to the California Public Records Act (CPRA); and Contractor further agrees that it shall defend, indemnify and hold County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from denial by County of a CPRA request for information arising from any representation, or any action (or inaction), by the Contractor. In the event that the County is required by judicial or administrative process to disclose the Contractor's information, it shall promptly notify and allow the Contractor a reasonable time to oppose such process.

(8) Pay Equity Notification: Contractor shall provide employees and applicants a copy of any applicable pay equity Laws or by posting a copy in conspicuous places available to employees and applicants. Such notification shall occur at least once during the term

of this Agreement and, if this Agreement is a multi-year Agreement, at least annually thereafter.

(9) **Material Breach:** Failure to comply with any part of this Section shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and/or at law. County may, among other things, take any or all of the following actions:

- (i) Suspend or terminate any or all parts of this Agreement.
- (ii) Withhold payment to Contractor until full satisfaction of a Final Judgment, Decision, Determination, or Order.
- (iii) Offer Contractor an opportunity to cure the breach.

(10) **Subcontractors:** Contractor shall impose all of the requirements set forth in this Section on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment, Decision, Determination, or Order for violation of an applicable wage and hour Law promptly satisfies and complies with such Final Judgment, Decision, Determination, or Order.

All other terms and conditions of the Agreement remain in full force and effect. In the event of a conflict between the original Agreement and this Amendment, this Amendment controls.

Prepared and administered by Rachel Su, Procurement Contract Specialist at 408-491-7444 or Rachel.su@prc.sccgov.org

The Agreement as amended constitutes the entire agreement of the parties concerning the subject matter herein and supersedes all prior oral and written agreements, representations and understandings concerning such subject matter.

By signing below, signatory warrants and represents that he/she executed this Amendment in his/her authorized capacity, that he/she has the authority to bind the entity listed below to contractual obligations and that by his/her signature on this Amendment, the entity on behalf of which he/she acted, executed this Amendment.

COUNTY OF SANTA CLARA

DocuSigned by: Long Zhang 4/30/2019

Long Zhang Date

Procurement Manager

DocuSigned by: Alice Bailey 5/2/2019

Alice Bailey Date

Director of Procurement

CONTRACTOR

DocuSigned by: Dalila Osipov

By: Dalila Osipov

Print: Dalila Osipov

Title: Mgr. Fin Plng & Analysis OBO Dir. Stephanie Sm

Date: 4/30/2019

APPROVED AS TO FORM AND LEGALITY

DocuSigned by: Sara J. Ponzio 4/30/2019

Sara J Ponzio Date

Deputy County Counsel

Attachment: Exhibit B1 Price Summary and Compensation Plan

Exhibit B1 Price Summary and Compensation Plan

All pricing below shall be firm during the term of the Agreement. Price listed below are based upon FOB Destination, freight prepaid and added. No additional costs, other than those identified below, will incurred to the County to meet the specification and requirements of this agreement.

1. Equipment

LINE	DESCRIPTION	Unit of Measure (UOM)	MANUFACTURE PART#	CARDINAL PART#	PRICE
1	Sakura Tissue Tek xPress X120 Rapid Tissue Processor, Mfr/Product. # 7720 (Equipment)	1	7720	SF7720	\$187,595.00
2	Freight	1	N/A	N/A	\$1,764.00
3	Sakura Uninterrupted Power Supply (UPS), 1 Hour, Xpress® x50 and AutoTEC® (Accessory)	1	7011	SF7011	\$6,995.00
4	Freight	1	N/A	N/A	\$662.00
	Total				\$197,016.00

2. Service

LINE	SERVICE REQUIREMENTS BELOW SHALL BE THE SAME AS SPECIFIED IN EXHIBIT C, SCOPE OF WORK	UNIT OF MEASURE (UOM)	PRICE
1	1 st year standard warranty (starts after County acceptance of installed the equipment and accessory)	Year	Included
2	Extended Service and Maintenance. Year 2 warranty for the equipment and accessory (starts after the 1 st year standard warranty)	Year	\$18,124.00
3	Extended Service and Maintenance. Year 3 warranty for the equipment and accessory (starts after the year 2 extended service and maintenance)	Year	\$18,124.00
	TOTAL		\$36,248.00

County Customer Contact
Santa Clara County Valley Medical Center

Stefanie Wong
Administrative Services Manager
Laboratory & Pathology
751 S. Bascom Avenue
San Jose CA 95128

Phone: 408-885-6564
Email: Stefanie.Wong@hhs.sccgov.org

Contractor Contact

Cynthia Leon
Diagnostic Specialist, Pacific Northwest Region
Laboratory Products

Phone: 530-400-1386
Email: cynthia.leon@cardinalhealth.com



County of Santa Clara

Office of the County Executive
Procurement Department
150 W. Tasman Dr. First Floor
San Jose, CA 95134

Telephone 408-491-7400 • Fax 408-491-7496

**SECOND AMENDMENT TO AGREEMENT NO. 5500002836
BY AND BETWEEN
THE COUNTY OF SANTA CLARA AND
CARDINAL HEALTH**

This is the Second Amendment to the Agreement No.5500002836 between the County of Santa Clara ("County" or "Customer") and Cardinal Health ("Cardinal" or "Contractor") entered into on November 22, 2016 to provide Sakura Tissue Tek xPress x 120 Rapid Tissue processor with service and maintenance for the County.

This Agreement is amended as follows effective on November 22, 2021:

1. Key Provision, **AGREEMENT TERM**, on page 1 of the agreement, is revised to read:
"This Agreement commences on November 22, 2016 and expires November 21, 2026, unless terminated earlier or otherwise amended."
2. Key Provision, **TOTAL AGREEMENT VALUE**, on page 2 of the agreement, is revised to read: "The total not to exceed value of this agreement is \$888,158.24 which represents an increase of \$288,158.24 from the prior not to exceed value of \$600,000.00."

Contractor understands that not to exceed value does not represent a commitment by County to Contractor.

3. Replace **Exhibit B-1, Price Summary and Compensation Plan** with **Exhibit B-2, Price Summary and Compensation Plan**, attached hereto and incorporated herein by this reference.

All other terms and conditions of the Agreement remain in full force and effect. In the event of a conflict between the original Agreement and this Amendment, this Amendment controls.

Prepared and administered by: Alex Qin, Buyer I at (408) 491-7441 or Alex.Qin@prc.sccgov.org

The Agreement No. 5500002836 as amended constitutes the entire agreement of the parties concerning the subject matter herein and supersedes all prior oral and written agreements, representations and understandings concerning such subject matter.

By signing below, signatory warrants and represents that he/she executed this Amendment in his/her authorized capacity, that he/she has the authority to bind the entity listed below to contractual obligations and that by his/her signature on this Amendment, the entity on behalf of which he/she acted, executed this Amendment.

COUNTY OF SANTA CLARA

CARDINAL HEALTH

DS
DocuSigned by:
MP Marlon Paulo
B6C24B6275434D4...

Marlon Paulo
Deputy Director of Procurement

Date: 11/30/2021

By: Michael Alyn

Print: MICHAEL ALYN

Title: DIRECTOR OF SALES

Date: 11/24/2021

APPROVED AS TO FORM AND LEGALITY

DocuSigned by:
Sara J Ponzio 11/24/2021
4B974B9E089D4D9...

Sara J. Ponzio
Deputy County Counsel

Attachment: Exhibit B-2, Price Summary and Compensation Plan

EXHIBIT B-2
PRICE SUMMARY AND COMPENSATION PLAN

All pricing below shall be firm during the term of the Agreement. Price listed below are based upon FOB Destination, freight prepaid and added. No additional costs, other than those identified below, will incurred to the County to meet the specification and requirements of this agreement.

1. Equipment

LINE	DESCRIPTION	Unit of Measure (UOM)	MANUFACTUR E PART#	CARDINAL PART#	PRICE
1	Sakura Tissue Tek xPress X120 Rapid Tissue Processor, Mfr/Product. # 7720 (Equipment)	1	7720	SF7720	\$187,595.00
2	Freight	1	N/A	N/A	\$1,764.00
3	Sakura Uninterrupted Power Supply (UPS), 1 Hour, Xpress® x50 and AutoTEC® (Accessory)	1	7011	SF7011	\$6,995.00
4	Freight	1	N/A	N/A	\$662.00
	Total				\$197,016.00

2. Service

LINE	SERVICE	UNIT OF MEASURE (UOM)	PRICE
1	1 st year standard warranty (starts after County acceptance of installed the equipment and accessory)	Year	Included
2	Extended Service and Maintenance. Year 2 warranty for the equipment and accessory (starts after the 1 st year standard warranty)	Year	\$18,124.00
3	Extended Service and Maintenance. Year 3 warranty for the equipment and accessory (starts after the year 2 extended service and maintenance)	Year	\$18,124.00
	TOTAL		\$36,248.00

3. Service for County Owned Equipment

Service Requirements below shall be the same as specified in Exhibit C, Scope of Work.

PO/Billing will be made on annual basis at 1/5th total cost of 5 year service contract, between customer and distributor and service provider at \$57,631.65 per year.

During the term of the Agreement, additions or deletions of instruments shall be made.

Equipment Description:

Contract	Product Code & Description	UM	Qty	Manufacturer	Price	Extended Price
1425120	Tissue-Tek Xpress x120 - SN# 77200089 Service	EA	1	Sakura Finetek	\$ 95,000.00	\$ 95,000.00
1438182	Tissue-Tek Film, Coverslipper - SN# 47401132 Service	EA	1	Sakura Finetek	\$ -	\$ -
1438182	Tissue-Tek Prisma, Automated Stainer - SN# 61300631-1010 Service	EA	1	Sakura Finetek	\$ 34,540.00	\$ 34,540.00
1438183	Tissue-Tek VIP6, Floor Tissue Processor - SN# 60300163 Service	EA	1	Sakura Finetek	\$ 26,950.00	\$ 26,950.00
1438183	Tissue-Tek VIP6, Floor Tissue Processor - SN# 60300164 Service	EA	1	Sakura Finetek	\$ 26,950.00	\$ 26,950.00
1438184	Tissue-Tek Tec5 Embedding Module - SN# 51012855 Service	EA	1	Sakura Finetek	\$ 5,720.00	\$ 5,720.00
1438184	Tissue-Tek Tec5 Embedding Module - SN# 51012856 Service	EA	1	Sakura Finetek	\$ 5,720.00	\$ 5,720.00
1438185	Tissue-Tek Film, Coverslipper - SN# 47400604 Service	EA	1	Sakura Finetek	\$ 19,689.12	\$ 19,689.12
1443257	Tissue-Tek VIP6 AI, Floor Tissue Processor - SN#60400513 Service	EA	1	Sakura Finetek	\$ 26,950.00	\$ 26,950.00
1443257	Tissue-Tek VIP6 AI, Floor Tissue Processor - SN#60400514 Service	EA	1	Sakura Finetek	\$ 26,950.00	\$ 26,950.00
1443385	Tissue-Tek Film, Coverslipper - SN# 47401133 Service	EA	1	Sakura Finetek	\$ 19,689.12	\$ 19,689.12

Outright Purchase Total	Equipment	\$ 288,158.24
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County Customer Contact
Santa Clara County Valley Medical Center

Stefanie Wong
Administrative Services Manager
Laboratory & Pathology
751 S. Bascom Avenue
San Jose CA 95128

Phone: 408-885-6564
Email: Stefanie.Wong@hhs.sccgov.org

Contractor Contact

Thomas Crowley

Phone: 408-839-1501
Email: thomas.crowley@cardinalhealth.com