



TO: SOUTHERN NEVADA DISTRICT BOARD OF HEALTH **DATE: February 26, 2014**

RE: Approval of Lease Agreement for Panther Instrument System, DX

PETITION #04-15

That the Southern Nevada District Board of Health approve Lease Agreement for the equipment lease of a Panther Instrument System, DX which will perform C. trachomatis/N. gonorrhoeae (CT/NG) combo testing.

PETITIONERS:

Patricia Armour, Laboratory Manager
Cassius Lockett, Director of Community Health
Andrew J. Glass, Director of Administration
Joseph P. Iser, M.D., Chief Health Officer

DISCUSSION:

The lease of the Hologic Panther Instrument System DX will provide a state of the art Chlamydia trachomatis/Neisseria gonorrhoeae (CT/NG) molecular testing platform that is necessary for the Southern Nevada Public Health Laboratory (SNPHL) to begin testing samples submitted by Southern Nevada Health District (SNHD) nursing programs for CT/NG testing in 2015. This lease will eliminate the need for SNHD nursing programs to ship clinical samples for CT/NG testing to an out of state laboratory. Performing the testing in-house at SNPHL will improve test result turn around time, increase staff efficiency and reduce shipping expenses.

FUNDING:

Thirty six month lease – No Cost

Purchase minimum of 10,000 tests per year.

250 tests per Kit = \$2,100. At 40 Kits per year, estimated minimum annual expense = \$84,000

Funding Sources – 8010 and STD grant (percentages to be determined)



**EQUIPMENT LEASE AGREEMENT
BETWEEN
SOUTHERN NEVADA HEALTH DISTRICT
AND
HOLOGIC, INC.
SNHD-4-LS-15-052**

THIS EQUIPMENT LEASE AGREEMENT is entered into by and between the Southern Nevada Health District ("Health District") and Hologic, Inc. ("Contractor") (individually "Party," collectively "Parties").

WHEREAS, the Health District is the public health authority organized pursuant to Nevada Revised Statutes (NRS), Chapter 439, and has jurisdiction over all public health matters within Clark County, Nevada; and

WHEREAS, Health District desires to lease equipment which will perform molecular C. trachomatis/N. Gonorrhea combo testing (the "Required Testing"); and

WHEREAS Contractor is a developer, manufacturer and supplier of diagnostic products, and desires to lease to Health District a Hologic Panther Instrument System DX which will perform molecular testing, including the Required Testing (the "Equipment"); and

WHEREAS, Health District and Contractor desire to provide in writing a full statement of their respective rights and obligations in connection with their mutual agreement in furtherance of the above described purposes; and

NOW, THEREFORE in consideration of the mutual promises and undertakings herein specified, the Parties agree as follows:

1. **TERM.** This Agreement shall be effective from the last signature affixed to this Agreement and shall terminate 36 months thereafter unless sooner terminated by either Party as permitted in this Agreement. Upon issuance of an amendment signed by both Parties, this Agreement may be extended for three additional one-year periods. At the end of the Term, Health District agrees to arrange the return of any Contractor-owned Equipment promptly to Contractor.
 - 1.01 This Agreement may be terminated by mutual consent of both Parties or unilaterally by either Party with or without cause.
 - 1.02 This Agreement may be terminated by either Party prior to the date set forth in paragraph 1, provided that, unless terminated for cause, a termination shall not be effective until thirty (30) days after a Party has served written notice upon the other Party.

1.03 This Agreement is subject to the availability of funding and shall be terminated immediately if for any reason State and/or Federal funding ability, or private grant funding ability, budgeted to satisfy this Agreement is withdrawn, limited, or impaired.

2. COMPENSATION. Health District agrees to pay Contractor the price per kit as indicated in Attachment A: Payment, during the Term of this Agreement.
3. INCORPORATED DOCUMENTS. The services to be performed, the goods to be provided, and the consideration therefore shall be specifically described in the attachments to this Agreement, which are incorporated into and are specifically a part of this Agreement, as follows:

ATTACHMENT A: PAYMENT

ATTACHMENT B: SUPPORT SERVICES

4. EQUIPMENT. Contractor will retain title to the Equipment during the Term of this Agreement, and may file a standard Uniform Commercial Code Form 1 to perfect its interest in the Equipment. All parts replaced or removed under this Agreement become the property of Contractor.
5. RESPONSIBILITIES OF THE PARTIES. During the term of this Agreement:

5.01 Contractor's Responsibilities. Contractor will:

- a. Assume all responsibility for shipping charges associated with return of Equipment at the end of the Term.
- b. Pay for all costs associated with a onetime relocation of the Equipment provided such relocation occurs within thirty-six (36) months after the Effective Date of this Agreement.
- c. Provide on-site installation and training to Health District by Contractor authorized personnel.
- d. Pay for Contractor travel expenses.
- e. Reimburse a Laboratory Information System vendor ("Vendor") of Health District's choosing, up to a maximum of Seven Thousand and five hundred Dollars (\$7,500.00) towards the development of an interface between the Equipment's reporting system and Vendor ("Interface Payment") in consideration of Health District's Annual Minimum Commitment ("Minimum Commitment") as detailed in Attachment A: Payment; provided that: i) Health District provides Contractor with advance written notice of its intent to proceed with the interface development ("Notice to Proceed"), which notice must be received by Contractor within ninety (90) days after the Effective Date of the Agreement: ii) the interface development starts no later than six (6) months from the date of the Notice to Proceed, iii) is fully developed for Health District's use within six (6) months of the development start date; and iv) Health District provides Contractor with a copy of all invoices for the interface development

in support of the amount to be reimbursed. Contractor will not issue the Interface Payment unless the foregoing conditions are met.

5.02 Health District's Responsibilities. Health District will:

- a. Prior to any shipment of repair parts or visit by Contractor's service representative, Health District will perform all pertinent diagnostic programs, tests, basic troubleshooting and provide a description of the failure or error.
- b. Not modify or otherwise change Equipment. Health District will use the same standard of care to protect the Equipment from loss and damage as it uses to protect its own equipment.
- c. Use the Equipment at Health District's principal address only.
- d. Will contact Contractor's service department to make arrangements with Contractor's authorized personnel to perform any Equipment relocation.
- e. Not remove any labels, tags, symbols or serial numbers that may be affixed to any items of Equipment unless removal is required or approved by Contractor in writing.
- f. Notify Contractor immediately if any attachment, encumbrance, lien or security interest is filed or claimed. Health District shall remain responsible for the normal care and maintenance of the Equipment.
- f. Health District shall place all orders relating to the Minimum Commitment as detailed in Attachment A: Payment, directly with Contractor, at 10210 Genetic Center Drive, San Diego, CA 92121. Orders may be placed by: Phone at 800-523-5001, Fax at 800-288-3141 or at customerservice5@Hologic.com
 - i.) TECAN tips (catalog # 10612513) are the only tips that Contractor has validated for use on the Equipment, and not support the use of non-TECAN tips on the Equipment as stated in the Equipment Operator's Manual and pursuant to the terms of the warranty for the Equipment. TECAN tips (catalog #10612513) can be directly ordered from TECAN U.S. at 800-352-5128.

6. STATUS OF PARTIES: INDEPENDENT CONTRACTOR. The Parties are associated with each other only for the purposes and to the extent set forth in this Agreement and in respect to performance of Services pursuant to this Agreement. In the performance of such Services, Contractor shall at all times be an independent contractor with respect to Health District. Contractor is not an employee or agent of Health District. Further, it is expressly understood and agreed by the Parties that nothing contained in this Agreement will be construed to create a joint venture, partnership, association, or other affiliation or like relationship between the Parties.

7. BREACH; REMEDIES. Failure of either Party to perform any obligation of this Agreement shall be deemed a breach. Except as otherwise provided for by law or this Agreement, the

rights and remedies of the Parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages, and to a prevailing Party, the right to seek reasonable attorneys' fees and costs. Should Health District be in material breach, Contractor may immediately require Health District to arrange the return of any Contractor-owned Equipment to Contractor.

8. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by either Party shall not operate as a waiver by such Party of any of its rights or remedies as to any other breach.
9. LIMITED LIABILITY. Agreement liability of Health District shall not be subject to punitive damages. To the extent applicable, actual agreement damages for any breach shall be limited by NRS 353.260 and NRS 354.626.
10. FORCE MAJEURE. Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.
11. INDEMNIFICATION. Neither Party waives any right or defense to indemnification that may exist in law or equity.
12. NON-DISCRIMINATION. As an Equal Opportunity Employer, Contractor has an ongoing commitment to hire, develop, recruit and assign the best and most qualified individuals possible. Contractor employs employees without regard to race, sex, color, religion, age, ancestry, national origin, marital status, status as a disabled veteran, or veteran of the Vietnam era, disability or sexual orientation. Contractor likewise agrees that it will comply with all state and federal employment discrimination statutes, including but not limited to Title VII, rules enforced by the Nevada Equal Rights Commission, and the American with Disabilities Act, in connection with this Agreement.
13. SEVERABILITY. If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.
14. ASSIGNMENT. Neither Party shall assign, transfer or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other Party.
15. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents, including this Agreement, and any other documents generated incidental thereto may be opened by Health District to public inspection and copying. Health District will have a duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

16. PROPER AUTHORITY. The Parties hereto represent and warrant that the person executing this Agreement on behalf of each Party has full power and authority to enter into this Agreement and that the Parties are authorized by law to perform the services set forth in the documents incorporated herein.
17. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the Parties and supersedes any prior contracts or agreement between the Parties regarding the subject matter hereof.
18. AMENDMENTS. This Agreement may be amended only by a writing signed by a duly authorized agent/officer of each Party and effective as of the date stipulated therein.
19. GOVERNING LAW. This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed according to the laws of the State of Nevada, with Clark County, Nevada as the exclusive venue of any action or proceeding related to or arising out of this contract.
20. NOTICES: All notices permitted or required under this Agreement shall be made by personal delivery, overnight delivery, or via U.S. certified mail, postage prepaid to the other Party at their address set out below:

Southern Nevada Health District
Financial Services Department
Materials Management Supervisor
P.O. Box 3902
Las Vegas, NV 89127

Hologic, Inc.
Jennifer Shenfield
Hologic Account Executive
10201 Genetic Center Drive
San Diego, CA 92121

Equipment Contact and Shipping Information:


Southern Nevada Public Health Laboratory
Pat Armour, Laboratory Manager
700 Desert Lane
Las Vegas, NV 89106
Contractor Assigned Health District Number: 159147
(702) 759-1020
armour@snhdmail.org

[SIGNATURE PAGE TO FOLLOW]

BY SIGNING BELOW, the Parties agree that they have read, understand, and agree to the conditions set forth above and have caused their duly authorized representatives to execute this Agreement.

SOUTHERN NEVADA HEALTH DISTRICT

HOLOGIC, INC.

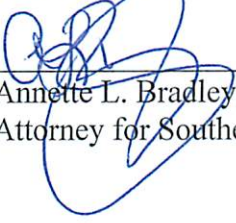
By: 
Andrew J. Glass, FACHE, MS
Director of Administration

By: _____
Joanne Dada
Director of Contracts

Date: 2/20/15

Date: _____

Approved as to form:


Annette L. Bradley, Esq.
Attorney for Southern Nevada Health District

**ATTACHMENT A
PAYMENT
SNHD-4-LS-15-052**

1. In consideration of the lease of the Panther Instrument System DX, Health District agrees to pay Contractor as follows:

1.01 Health District will pay Contractor the price per kit as indicated in the Purchase Commitment section below during the Term. Health District agrees to purchase enough kits to run the number of tests listed under the Annual Minimum Commitment column ("Minimum Commitment"), each year for the duration of the Agreement.

- a. The Parties agree that the Minimum Commitment represents the minimum quantity to be purchased by Health District on an annual basis. All purchases made in a given annual period shall apply to the purchase commitment for that annual period only and shall not be applied to any future Contract Year. Each twelve (12) month period beginning on the Effective Date is a "Contract Year" for the purposes of this Agreement. Products not subject to the Purchase Commitment may be ordered by Health District on an as needed basis. Pricing shall not change for the duration of the Agreement.
- b. Contractor shall provide Health District with two (2) kits (500 tests) of Product Number 303094 to be used for validation and verification and shall count toward Health District's purchase commitment for this product category.

Equipment

Product No.	Description	Qty	Serial # (if already on site)	Qty to Ship
303095	Panther Instrument System, DX	1	TBD	1
TBD	PRO360° Remote Diagnostics Management	1	N/A	If requested by Health District*

Note: Health District may opt to utilize Remote Diagnostics Pro360° if found to conform to Health District's IT requirements.

Annual Minimum Commitment

Product Category	Minimum Annual Commitment	Product No.	Description	Qty of Tests per Kit	Price per Kit
AC2 Tests	10,000 tests**	303094	Aptima Combo 2, Kit – Panther	250 tests	\$2,100.00
		302923	Aptima Combo 2, Kit – Panther	100 tests	\$840.00
Collection Devices	10,000 collections	301041	Kit APTIMA COMBO 2 Swab Spec Coll	50 collections	\$40.00
		301040	Kit APTIMA COMBO 2 Urine Spec Coll	50 collections	\$50.00
		301162	Collect Kit, Vaginal Swab (IVD)	50 collections	\$50.00
		105575	Aptima Urine Collection Tubes	100 collections	\$100.00

Products Not Subject to Purchase Commitment

Product Number	Description	Price per Kit
901121	TECAN 1000UL FILTERED TIPS	\$821.91
301110	APTIMA Cntrls Kit (1 tray) IVD	\$230.00
303096	Run Kit, Panther	No Charge
303085	Advanced Cleaning Solution	No Charge
CL0041	Caps, AMP/P.R.S. (CL0045) DIAG.	No Charge
CL0040	Caps, TCR/SEL (CL0038) DIAG.	No Charge
501604	Spare Caps, PP, 60mL, TCR APTIMA 2x50	No Charge
501616	Spare Caps, 30mL tube (501213) Diagnostics	No Charge
105668	APTIMA PENETRABLE CAPS	\$100.00***

*** The Parties agree and acknowledge that the Health District may purchase up to five (5) bags of APTIMA PENETRABLE CAPS at no-charge annually during the Term. Any additional APTIMA PENETRABLE CAPS will be purchased at the price listed above.

- 1.02 Labor and materials charges for all of the excluded services will be billed to Health District at rates prevailing at the time of service.

**ATTACHMENT B
SUPPORT SERVICES
SNHD-4-LS-15-052**

- I. Contractor will provide the following Support Services to the Health District.
 - A. Labor, necessary replacement parts. (excluding disposables which include, but are not limited to: tips, MTU's, TTU's, waste bags and bench covers)
 - B. Preventative maintenance by Contractor's technical service staff. (Monday through Friday only)
 - C. Equipment repair for reasons other than those items listed below under item IV, Services Excluded.
 - D. Access to Contractor Technical Support telephone support, Monday through Friday, 5:00 AM to 5:00 PM Pacific Standard Time (excluding Contractor holidays)
 - E. Access to Technical Support via 888-484-4747. Contractor will immediately notify Health District if this number changes.
 - F. Factory authorized updates or modifications, including parts.
- II. PRO360° REMOTE DIAGNOSTICS and Service Representative Dispatch
 - A. Representative on Health District site within 24 hours (Monday – Friday) if PRO360° Remote Diagnostics Management is installed.
 - B. Representative on Health District site within 48 hours (Monday – Friday) if PRO360° Remote Diagnostics is not installed. Service response times are predicated upon the Equipment operator being willing and able to transfer Equipment log files to Contractor when instructed by Contractor Technical Support using the protocol described in the Equipment Operator's Manual.
 - C. Provide training for two (2) Health District operators at Contractor's facility and at Contractor's expense, to include roundtrip airfare, ground transportation, hotel accommodations and meals.
 - D. Provide insurance coverage during the Term of this Agreement, at no cost to Health District, for all Contractor-owned Equipment provided to Health District pursuant to this Agreement.
- III. EPIDEMIC FAILURE
 - A. "Epidemic Failure" means the Equipment is down for five (5) consecutive business days resulting from the same common root cause, as verified by Contractor, during any ninety (90) day period; provided however, the Equipment failure is not due to operator error or otherwise due to the failure of the operator to follow the Equipment's

written operating instructions. If an Epidemic Failure occurs, then Contractor agrees at its expense, to assist Health District in the technical resolution of the Epidemic Failure and to be responsible for all direct losses, liabilities, damages, costs and/or expenses incurred by Health District as a result of the Epidemic Failure. If Contractor is unable to resolve the Epidemic Failure, Health District may, at its sole option, return any of the defective Equipment then in the possession of Health District for repair or replacement and any and all associated shipping and insurance charges upon receipt of a Return Material Authorization (RMA), and/or terminate this Agreement upon giving ninety (90) days prior written notice to Contractor, provided that Health District shall be liable to Contractor for any and all costs and expenses of excess materials prepared for the production and/or repair/replacement of Equipment under this Agreement arising from and/or in connection with such termination. Contractor has the right to inspect units at Health District's location to identify defective Equipment of the same root cause.

B. Epidemic Failure Analysis. If any Epidemic Failure occurs, Contractor will provide Health District with a written "root cause" failure analysis and a written corrective action plan within five (5) working days after receipt of:

- 1) Pro360 test logs documenting the failure of the Equipment; or
- 2) A written description of the failure or error in the event that Pro360 test logs are not available.

Contractor will bear all risks and expenses associated with preparing such failure analysis and corrective action plan and in implementing the same, and with providing related technical support as Health District may reasonably request.

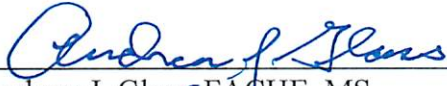
IV. SERVICES EXCLUDED. The following services are excluded under this Agreement:

- A. Any repair required due to causes other than use of the Equipment pursuant to the operator's or user's manual. Such causes include, but are not limited to: misuse, abuse, improper use, casualty loss, neglect, reprogramming error, malfunction or failure of environmental control Equipment, electrical Equipment malfunction or failure, repair maintenance, modification, relocation, or reinstallation by other than Contractor authorized personnel, installation of commercial or non-Equipment software, use of any other tips on the Equipment other than TECAN Tips.
- B. Routine tasks, other than those performed by Contractor during preventative maintenance visits, covered in the operator's or user's manual.
- C. Supply items (including, but not limited to, those items listed in the package insert or manual as "materials required but not provided," TECAN Tips, bleach, squirt bottles, paper towels, and other such items that are needed for general use but not specifically by the Equipment) and consumable items.

BY SIGNING BELOW, the Parties agree that they have read, understand, and agree to the conditions set forth above and have caused their duly authorized representatives to execute this Agreement.

SOUTHERN NEVADA HEALTH DISTRICT

HOLOGIC, INC.


By: 
Andrew J. Glass, FACHE, MS
Director of Administration

By: _____
Joanne Dada
Director of Contracts

Date: 7/20/15

Date: _____

Approved as to form:


Annette L. Bradley, Esq.
Attorney for Southern Nevada Health District