



# County of San Mateo

## Inter-Departmental Correspondence

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**Department:** COUNTY MANAGER

**File #:** 21-072

Board Meeting Date: 1/26/2021

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**Special Notice / Hearing:** None  
**Vote Required:** Majority

**To:** Honorable Board of Supervisors

**From:** Louise F. Rogers, Chief, San Mateo County Health

**Subject:** Amendment to Agreement between Gotham LLC and County of San Mateo

**RECOMMENDATION:**

Adopt a resolution authorizing the Chief of San Mateo County Health, or the Chief's designee, to amend the agreement between Gotham LLC in partnership with Curative Inc. and the County of San Mateo for COVID-19 testing and sample processing to increase the maximum amount payable under the agreement to \$4,000,000 and extend the term to June 30, 2021.

**BACKGROUND:**

Identifying positive COVID-19 cases through community testing opportunities continues to be a key component of both the State's and the County's pandemic response. Since September 2020, the County has greatly increased testing capacity and has consistently had one of the highest county testing rates per 100,000 population in the State. With respect to County-supported community testing sites, testing opportunities for residents now include multiple daily drive-through sites in the north, central, and southern parts of the County, daily mobile van testing, and neighborhood testing events operated by local community partners.

Pursuant to the emergency contracting authority granted by the Board of Supervisors, the County executed an Agreement in August 2020 with Gotham LLC in partnership with Curative Inc. (collectively, "Curative") for deployment of Curative's self-administered, oral swab COVID-19 test kits. The test kits can be administered by patients with minimal instruction and without any clinician supervision, allowing the kits to be used in a variety of settings. The kits have been used by the County's local partners, including community-based organizations, schools, churches, cities, and others, to operate neighborhood testing events serving specific at-risk communities and populations. The Agreement was amended three times to, among other things, extend the expiration to December 31, 2020 and expand testing opportunities to include two daily drive-through testing operations and mobile testing van in San Mateo County (totaling approximately 3,000 test capacity per day) operated directly by Curative.

On January 4, 2021, the U.S. Food and Drug Administration ("FDA"), the federal agency responsible

for protecting the public health, issued a safety communication warning of the risk that Curative's testing kits may return false negative results for asymptomatic individuals. County Health staff are monitoring the situation and engaging with Curative as it works to resolve the FDA's concerns. The FDA safety communication did not implicate the accuracy of properly administered Curative tests for symptomatic individuals, and the County's Public Health officials believe that properly administered Curative tests remain a valuable tool in the pandemic response in San Mateo County. The County has posted information about the FDA safety communication on the County's testing page and in outreach flyers so that residents may take it into consideration when choosing an appropriate testing vendor.

#### **DISCUSSION:**

Pursuant to Government Code section 25502.7, Resolution 077305 (adopted March 24, 2020) authorizes the County Manager, as the County's purchasing agent and Director of Emergency Services, or the County Manager's designee, to engage independent contractors for up to \$500,000 to perform services for the County related to the COVID-19 local emergency. The Agreement with Curative was executed pursuant to this authority, but based on the number of tests processed, the amount of the Agreement will exceed the \$500,000 contract authority threshold. In addition, the Agreement expired on its terms as of December 31, 2020. An amendment approved by your Board is therefore needed to continue Curative's services under the Agreement.

The proposed Fourth Amendment to the Agreement, which will be effective as of November 18, 2020, will increase the amount of the contract to \$4,000,000 and extend the expiration date to June 30, 2021. Per the terms of the Agreement as amended by the Fourth Amendment, Curative must seek reimbursement from available health insurance and federal Health Resources and Services Administration funding, and only if such sources are unavailable is the County obligated to pay \$150 per test. Through December 30, 2020, Curative has been able to bill insurance for approximately 81% of the 75,115 Curative tests under the Agreement, resulting in a total amount payable by the County through December 30, 2020 of approximately \$2,366,000.

Since San Mateo County enjoys nearly universal health insurance coverage, many of the unbillable tests to date are likely the result of patients declining or otherwise not providing full insurance information rather than lacking health coverage entirely. The County and Curative have implemented additional messaging regarding the need to present insurance information, and Curative is conducting revised training for testing operators to improve insurance information collection. It is expected that the number of unbillable tests under the Agreement will fall as the public becomes more accustomed to presenting insurance information at the time of testing, a practice that is becoming more common as the COVID testing industry has added insurance billing capacity in recent months. Although the volume of unbillable tests will vary depending upon a range of factors, including the progression of the pandemic in coming months, it is expected that the \$4,000,000 contract amount should cover unbillable tests through June 2021.

The Fourth Amendment also increases the termination notice period from thirty days to sixty days and adds a Business Associate Agreement for purposes of HIPAA compliance. Additionally, the Fourth Amendment adds an express provision disallowing balance billing patients or the County of San Mateo, increases the termination notice period from thirty days to sixty days, replaces the payment provisions described in Exhibit B, expands the indemnity provisions to cover the County's local testing partners, and adds a Business Associate Agreement for purposes of HIPAA compliance.

The resolution has been reviewed and approved by County Counsel as to form.

The resolution contains the County's standard provisions allowing amendment of the County fiscal obligations by a maximum of \$25,000 (in aggregate).

**FISCAL IMPACT:**

The costs of the agreement with Curative will be paid from CARES funds for services provided prior to December 30, 2020 and for services after December 30, 2020, from general fund or other monies received for pandemic response.