




**Financial and Administrative Service Department  
Purchasing Office**  
P.O. Box 1088, Austin, TX 78767

June 27, 2013

IDEXX Laboratories, Inc.  
Attn: Penny Guyton  
P.O. Box 615  
Westbrook, ME 04098-0615

Dear Penny:

The Austin City Council approved the execution of a contract with your company for Maintenance and Support for Digital Radiography System in accordance with the referenced solicitation.

Responsible Department:	Animal Services Office
Department Contact Person:	Dr. Linda Czisny
Department Contact Email Address:	<a href="mailto:linda.czisny@austintexas.gov">linda.czisny@austintexas.gov</a>
Department Contact Telephone:	512-978-0581
Project Name:	Maintenance and Support for Digital Radiography System
Contractor Name:	IDEXX Laboratories, Inc. 
Contract Number:	NA130000030
Contract Period:	06/27/13 - 06/26/18
Dollar Amount	\$31,000 (\$6,200/year)
Extension Options:	No Options
Requisition Number:	N/A
Solicitation Number:	Sole-Source
Agenda Item Number:	N/A
Council Approval Date:	N/A

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact Linda Czisny, Contract Manager at 512-978-0581.

Sincerely,



Israel Espinoza  
Buyer I  
Purchasing Office  
Finance and Administrative  
Service Department

cc: Abigail Smith, ASO  
Linda Czisny, ASO

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
IDEXX LABORATORIES INC.  
FOR  
MAINTENANCE AND SUPPORT FOR DIGITAL RADIOGRAPHY SYSTEM**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and IDEXX Laboratories, Inc. ("Contractor" or "IDEXX"), having offices at P.O. Box 615, Westbrook, ME 04098-0615.

**SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES**

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Sheri Clement; Phone: 877-433-9948 Option 2; Email: [sheri-clement@idexx.com](mailto:sheri-clement@idexx.com). The City's Contract Manager for the engagement shall be Abigail Smith; 512-978-0536; Email: [Abigail.smith@austintexas.gov](mailto:Abigail.smith@austintexas.gov). The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

**SECTION 2. SCOPE OF WORK**

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform each of the following tasks:

2.2.1 Contractor shall provide Extended Maintenance for the existing IDEXX Digital Radiography System that the City has purchased for the Austin Animal Center. The Terms and Conditions of the Extended Maintenance Agreement, as modified by the City, are attached hereto as Exhibit A.

**SECTION 3. COMPENSATION**

3.1 **Contract Amount.** The Contractor will be paid a not to exceed amount of \$6,200 per year for five (5) years. In consideration for the services to be performed under this Contract and the products to be purchased, the Contractor shall be paid an amount not-to-exceed \$31,000 for all fees and expenses.

3.2 **Invoices.**

3.2.1 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Austin Animal Shelter
Attn:	Linda Czisny
Address:	7201 Levander Loop
City, State, Zip Code	Austin, TX 78702

3.2.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.2.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.3.3 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.4 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables

delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 **Travel Expenses.** No travel reimbursement is authorized for this Contract.

3.6 **Final Payment and Close-Out.**

3.6.1 The making and acceptance of final payment will constitute:

3.6.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

#### **SECTION 4. TERM AND TERMINATION**

4.1 **Term of Contract.** The Contract shall be in effect retroactively to April 11, 2013 and shall remain in effect for a period of five (5) years unless earlier terminated by the City.

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective thirty (30) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such thirty (30) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

## **SECTION 5. OTHER DELIVERABLES**

5.1 **Insurance.** The following insurance requirements apply.

### **5.1.1 General Requirements**

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the Contractor's email address, and shall be mailed to the following address:

City of Austin  
Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law

or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project

5.1.2.1.2 Contractors/Subcontracted Work

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage

5.1.2.1.5 Cancel notice shall be according to policy terms.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage

5.1.2.2.2 Cancel notice shall be according to policy terms.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas

5.1.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage

5.1.2.3.3 Cancel notice shall be according to policy terms.

5.1.2.4 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

## 5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit C. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5.3 **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

## 5.4 **Delays.**

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the

Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.4.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.5 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.6 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

## **SECTION 6. WARRANTIES**

### **6.1 Warranty – Price.**

6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least 90 days, pursuant to Contractor's Standard Limited Warranty Policy, from the date of service or delivery of goods. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

## **SECTION 7. MISCELLANEOUS**

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service



requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

## **7.2 Workforce.**

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract.

7.2.2.1.1 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event.** The Contractor shall immediately notify the Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this contract;

7.4.2 any significant termination or addition of provider contracts;

7.4.3 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.4 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this contract;

7.4.5 reorganization, reduction and/or relocation in key personnel such as, but not limited to, customer service representatives or claims adjusters;

7.4.6 any litigation filed by a member against the Contractor; or

7.4.7 significant change in market share or product focus.

**7.5 Right To Audit.**

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

**7.6 Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

**7.7 Indemnity.**

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

**7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING,**

BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform hereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof, and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

IDEXX Laboratories, Inc.

ATTN: Sheri Clement

One IDEXX Drive

Westbrook, ME 04098-0615

7.10 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available,

to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 **Modifications.** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 **Dispute Resolution.**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the

filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

#### **7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

#### **7.22 Subcontractors.**

7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of

the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) days after receipt of payment from the City.

7.23 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.24 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.25 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.26 **Non-Suspension or Debarment Certification.** The City is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a contract with the City, the Contractor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.27 **Incorporation of Documents.** Section 0100, **Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address: [www.austintexas.gov/purchase/standard.htm](http://www.austintexas.gov/purchase/standard.htm). The terms and conditions of the Physio-Control Technical Services Support Agreement, attached hereto as Exhibit A, are hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

IDEXX Laboratories, Inc.

City of Austin

By: Penny Guyton  
Signature  
Name: Penny Guyton  
Printed Name  
Title: G.M. IDEXX Digital  
Date: 6/20/13

By: [Signature]  
Signature  
Name: Israel Espinoza  
Printed Name  
Title: Buyer I  
Date: 6/27/13

**List of Exhibits**

Exhibit A	Extended Maintenance Agreement
Exhibit B	Non Discrimination Certification

## Exhibit A Extended Maintenance

Every IDEXX Digital Imaging system provides state-of-the-art performance with full integration capabilities powered by IDEXX-PACS® Imaging Software.

That's an investment worth protecting with an IDEXX Extended Maintenance Agreement. We're proud to back you with the industry's broadest support and service coverage for your digital systems, including unparalleled customer support and complementary educational opportunities—so your practice can stay up and running no matter what.

IDEXX Support	IDEXX Education	IDEXX Service
<ul style="list-style-type: none"> <li>• 24/7 live customer support</li> <li>• Field technical support</li> <li>• Dedicated sales support</li> <li>• Live medical support network with access to board-certified veterinarians</li> <li>• Ongoing investment in research and development</li> <li>• Gold-standard technologies</li> <li>• Regular software updates</li> </ul>	<ul style="list-style-type: none"> <li>• IDEXX Learning Center</li> <li>• Medical and technical education</li> <li>• Local seminars</li> <li>• Webinars</li> <li>• CE credits</li> <li>• Medical consultations/help interpreting results</li> </ul>	<ul style="list-style-type: none"> <li>• 24/7/365 technical support, including remote troubleshooting</li> <li>• System swaps minimize downtime</li> <li>• On-site installation and field visit (if determined necessary), including calibration, technique chart review and modification, software upgrade and staff training on software features</li> <li>• Free shipping on items sent in for service</li> <li>• Parts and labor included at no additional expense</li> <li>• Flexible billing options</li> <li>• Nonstop coverage with automatic renewals</li> </ul>

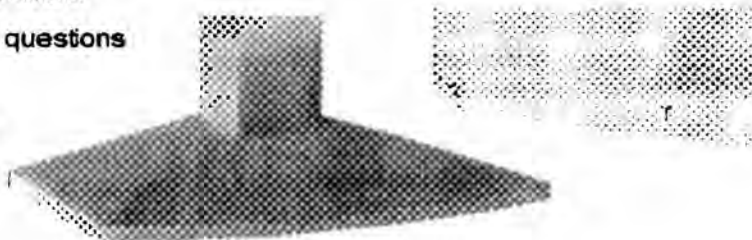
More than just replacement parts—an IDEXX Extended Maintenance Agreement is security.

IDEXX extended maintenance agreements provide comprehensive service and support to ensure quick and thorough resolution for minimal work interruption and to extend the value of your instrument.

### IDEXX Digital Imaging support

Our digital imaging support team receives ongoing advanced digital x-ray software and product support training specific to the needs of veterinary medicine. Remote Internet access ensures that we can troubleshoot issues comprehensively and avoid unnecessary downtime. Team members:

- Facilitate consultation and resolution for image quality questions
- Address work-flow or configuration issues
- Update software and troubleshoot hardware issues





Protect your investment for the long term with the company that has more than 25 years experience in the veterinary industry.

**One** extended maintenance agreement, **three** systems:



IDEXX I-Vision CR<sup>®</sup>  
Digital Imaging System



IDEXX DR<sup>®</sup> 1417  
Digital Imaging System



IDEXX EquiView<sup>™</sup>  
Digital Imaging System

**What's Covered†**

CR scanner  
Capture station (computer)<sup>‡</sup>  
Color monitor<sup>‡</sup>  
External hard drive<sup>‡</sup>  
IDEXX-PACS Imaging Software  
reference guides and tutorials  
IDEXX-PACS Imaging  
Software upgrades

Flat-panel detector plate  
Capture station (computer)<sup>‡</sup>  
Color monitor<sup>‡</sup>  
External hard drive<sup>‡</sup>  
Trigger unit  
USB control box  
Relay box  
Footswitch  
IDEXX-PACS Imaging Software  
reference guides and tutorials  
IDEXX-PACS Imaging  
Software upgrades

Flat-panel detector plate  
Capture station (laptop)<sup>‡</sup>  
External hard drive<sup>‡</sup>  
Trigger unit  
USB control box  
Foot tunnel  
Laptop case  
IDEXX-PACS Imaging Software  
reference guides and tutorials  
IDEXX-PACS Imaging  
Software upgrades

## IDEXX Diagnostic Instruments and Digital Imaging Products – North America Extended Maintenance Agreement (EMA)

These provisions apply to extended service plans offered by IDEXX for IDEXX diagnostic instruments and digital imaging products. The words we, us and our refer to IDEXX or its nominated repair service company. This EMA becomes effective upon the expiration of the relevant product warranty period if you consented to an EMA on an Order Form, or the earlier of our receipt of payment or your accepting service by us before our receipt of the maintenance fee if you ordered an EMA after you purchased a product. If we permit you to pay in installments, it is as an accommodation to you, and you agree to pay the entire fee for the maintenance period you have elected. If you order additional products, your maintenance fee may increase.

**Covered Products; Modifications:** This EMA covers only your IDEXX products (equipment and related IDEXX application software) specified in our invoice to you. We will perform services under this EMA at no further cost to you (and we will pay shipping costs to and from our repair facility), except in cases of improper use or mistreatment, etc. as provided below.

**Our Extended Support Commitment:** Provided you have paid the maintenance fee for the current maintenance period, if your equipment does not conform to our published specifications during the maintenance period, we will at our option either repair it with new parts or serviceable used parts that are equivalent or superior to new parts in performance, or replace it with serviceable used equipment that is functionally equivalent or superior to the replaced equipment in performance; and if your IDEXX software does not substantially conform to our published specifications during the maintenance period, we will attempt to modify it to make it conforming, as described below in "Specifics about Software Support."

**Hours of Service; Service Returns:** We will provide service in accordance with our normal procedures and during our normal business hours at our service locations, except holidays. In case of malfunction, you must first contact IDEXX Customer Support by telephone at our number provided in your product documentation. Our telephone support is available 24 hours/day, seven days/week except as provided under "Specifics About Software Support." Our support personnel will guide you to attempt to correct reported problems yourself. If telephone or electronic support (as described in the immediately following paragraphs) is not successful, we will give you further instructions. We have no obligation to provide on-site service; if it is necessary to return the product, you must do so to our designated facility for examination. Before you return any product, you must perform a full system backup of your data. We must issue you a Return Authorization Number before any return. If we authorize a return, we will pay shipping costs to and from our repair facility except in cases of improper use or mistreatment, etc. as provided below in "Your Obligations; Exclusions for Improper Use, Etc." All exchanged parts and products become our property.

**For IDEXX Diagnostic Instruments Only:** If you wish to receive electronic support on instruments for which such support is available, you must maintain an electronic link-up with us as we may instruct you from time to time. We will ship you loaner equipment if we elect to repair rather than replace your equipment and the time required to complete repairs exceeds 72 hours from receipt at our repair facility, or otherwise at our sole discretion. You shall pack and return-ship us the malfunctioning equipment the next business day after your receipt of loaner equipment. We will ship you the repaired equipment and you shall pack and return-ship the loaner equipment to us within two business days after your receipt of the repaired equipment. If we elect to replace your equipment,

we will ship you a replacement unit within 24 hours, during normal business hours, Monday-Friday, excluding holidays. You shall pack and return-ship us the malfunctioning equipment within two business days after your receipt of the replacement equipment. Delayed returns are subject to daily rental charges at our then-current rate.

**For IDEXX Digital Imaging Products Only:** You must maintain broadband Internet access at your equipment location, so we may directly work with your system from time to time. If you do not have broadband service and a site visit is required for services that could otherwise be provided through electronic support, we may charge you a site visit fee. If we determine that on-site service is necessary, we will promptly schedule such service. If we determine that you need to return the unit to IDEXX for service, we will ship you a replacement unit within 24 hours of the determined resolution, during normal business hours, Monday-Friday, excluding holidays. You shall pack and return-ship us the malfunctioning equipment within two business days after your receipt of the replacement equipment. Delayed returns are subject to daily rental charges at our then-current rate. Coverage of the PC included with an IDEXX Digital Imaging system is included under this EMA for the first 5 years from the system purchase date. Upon expiration of this 5 year term, you will be required to purchase a new PC from IDEXX Computer Sales or obtain an extended warranty directly from the PC manufacturer. We do not offer EMA coverage for PC issues after 5 years from the date of purchase. Due to technical differences in PCs, your Digital Imaging system must include a PC purchased from IDEXX. IDEXX is unable to configure or provide support for equipment purchased from a third party vendor.

**Specifics About Software Support:** For software products, we shall use reasonable commercial efforts (1) to report, track and monitor problems via the Internet, if available; (2) to determine, verify and resolve problems by telephone on a callback basis during our normal business hours at our service locations, Monday-Friday, except holidays; (3) to attempt to resolve nonconformities in a time frame reasonably proportionate, in our judgment, to the severity of the problem; and (4) to provide periodic modifications that we make available to other customers free-of-charge. We shall provide this support only for the two most current release versions of the software. At our option, you may be required to upgrade to the then current version of the software. If you have a networked installation, and if a system malfunction occurs, you are responsible for contacting your network support provider first to determine that the issue is not due to network problems, before contacting us for IDEXX product support. IDEXX does not provide anti-virus software and has no obligation to repair damage resulting from computer viruses, spyware, malware, worms or other harmful programs.

**Your Obligations; Exclusions for Improper Use, Etc.:** You must take reasonable care of the products, maintain them in a clean and appropriate environment and carry out the routine maintenance recommended by us in the applicable user guide, instructions or other documentation or otherwise communicated to you from time to time. You must provide reasonable supporting data to help identify reported problems. You must promptly install new release versions of software that we may periodically send you, and you must upgrade your operating system software as we may periodically recommend. You must treat any software patch, update, upgrade, modification or other enhancement that we may provide as "software" under your original license from us and use them only as permitted by that license. When we issue a software update, if your existing hardware does not meet minimum requirements to support that update, you will be responsible for updating your hardware.

We are not liable for loss of your data; we strongly recommend that you regularly perform a system backup on applicable products and archive your data to minimize loss in case of a malfunction. You must maintain any restoration CDs (or other media as we may recommend) and make them available to us as needed. It may be necessary to

migrate your existing data to new PCs during service or upgrade events. We are not responsible for lost data during this process and recommend that you perform a system backup prior to migration.

We cannot assure you of the performance of our products if you use them other than in strict accordance with our product instructions, if you use them on or in conjunction with products or services not provided and configured by us, or if you install any software applications on your products, other than those applications that we provide you or drivers for printers or communication devices. FAILURE TO USE ONLY OUR AUTHORIZED PRODUCTS OR SERVICES IN OR ON OUR PRODUCTS VOIDS THIS EMA AND OUR OBLIGATIONS TO YOU. In addition, if your equipment is not under warranty and is not currently covered by our EMA, we may at our option inspect your equipment before we agree to provide EMA coverage. We may charge you our then-standard rates for such inspection, and if repairs are required, we may either charge you for such repairs and replacement parts at our then-standard rates, exclude repairs to parts that have exceeded their reasonable life from EMA coverage, or vary your maintenance fee accordingly. If for any period you are not covered by our EMA and wish to start or resume such coverage, resumption will be at our discretion and we may charge you the maintenance fee for any period you were not covered.

Our EMA coverage does not cover damage resulting from any causes external to our products (which if repairable will be repaired at your expense), such as negligence or improper use or handling; casualty; external electrical fault; failure to follow packing or shipping instructions; use of unauthorized products in conjunction with our products; computer viruses, spyware, malware, worms or other harmful programs; or repairs or modifications made by anyone other than us or our authorized service providers. We will repair normal wear-and-tear damage only to the extent required for proper functioning of equipment; cosmetic damage to equipment is not covered. If we determine that the reported problem is not covered by our EMA, you must reimburse us for the costs of equipment shipping, and we will attempt to repair/replace the product at your cost, at our then-standard rates for such work, or return it as you instruct and at your cost; in such case you will also return any loaner or replacement equipment to us at your cost.

**User-Replacement Parts:** We do not provide EMA coverage on consumables or expendable parts, such as fuses, batteries, bulbs, cables, power cords, power supplies, ribbons, tapes, paper, CDs or other supplies or media, or on third-party products, such as printers (including cables, cords, and ink cartridges), routers or non-IDEXX software, all of which we provide on an "AS IS" basis. Third-party product manufacturers or suppliers may provide their own warranties or extended support coverage. Additional user-replacement parts that are excluded include the following, by way of example only:

**IDEXX i-Vision CR and IDEXX-CR™ 1417 cassettes and cassette assemblies**

**IDEXX VetLab® Station Barcode scanner and mounting arm**

**ProCyt Dx™ Hematology Analyzer Tube adapters (standard, mini, QC), cap remover, blood tube rocker**

**VetStat™ Electrolyte and Blood Gas Analyzer Calibration gas, battery, peristaltic pump cartridge, gas port seals**

Gold level coverage is offered on some IDEXX Diagnostic Instruments which includes coverage on certain consumables or expendable parts when determined to be needed. IDEXX StatSpin VT Centrifuge Gold EMA includes one new rotor kit per year at no charge. VetLyte Electrolyte Analyzer Gold EMA includes coverage on electrodes, electrode housings, tubing sets and cleaning and conditioning solutions.

**Maintenance Period; Automatic Renewal; Renewal Fees:** The maintenance period begins and ends on the dates specified in the Contract.

If we do not receive payment of the maintenance fee in accordance with our invoices to you, or before the beginning of your initial maintenance period or any renewal period, then we reserve the right to terminate this EMA immediately, and we will not have any further obligations to you.

**Limitation of Damages:** We are not liable for failure to provide services due to circumstances beyond our reasonable control. UNDER NO CIRCUMSTANCES WILL WE OR OUR LICENSORS BE LIABLE TO YOU OR ANY OTHER PERSON FOR LOSS OF PROFIT OR USE, SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, PUNITIVE OR MULTIPLE DAMAGES, INCLUDING WITHOUT LIMITATION FOR LOSS OF GOODWILL, DATA OR EQUIPMENT OR FOR BUSINESS INTERRUPTION, ARISING OUT OF THE MANUFACTURE, SALE, SUPPLY OR USE OF OUR PRODUCTS OR SERVICES OR FAILURE OR DELAY IN DELIVERING SUCH PRODUCTS OR SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, EVEN IF WE WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

OUR ENTIRE LIABILITY FOR A PRODUCT OR SERVICE, WHETHER BASED ON CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE MAINTENANCE FEE FOR THE APPLICABLE PRODUCT PAID BY YOU FOR THE MOST RECENT TWELVE (12) MONTHS OF THE MAINTENANCE PERIOD (OR THE LAST SUCH PERIOD, FOR ANY CLAIMS ARISING AFTER ALL MAINTENANCE PERIODS).

EXCEPT AS STATED IN THIS EMA, WE AND OUR LICENSORS MAKE NO OTHER WARRANTY, REPRESENTATION OR CONDITION, EXPRESS OR IMPLIED, WRITTEN OR ORAL, AND THERE IS NO WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CARE AND SKILL, OR TITLE.

**Termination; Termination Payments; Refund:** Termination provisions are covered in the Contract.

**Miscellaneous; No Assignment:** Except as provided above for our right to modify maintenance terms from time to time upon not less than 30 days' notice to you, neither party can modify this EMA (including this paragraph) except in a written document signed by authorized representatives of both parties. You may not assign any duties, rights or claims hereunder without our prior written consent, even if you sell your equipment to another. Any such attempted assignment is void, and we will not have any obligations to you or your assignees.

**Exhibit C**  
**City of Austin, Texas**  
**EQUAL EMPLOYMENT/FAIR HOUSING OFFICE**  
**NON-DISCRIMINATION CERTIFICATION**

**City of Austin, Texas**  
**Human Rights Commission**

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

**Sec. 4-2 Discriminatory Employment Practices Prohibited.** As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination in Employment Policy:**

*As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.*

*The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.*

*Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.*

*Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.*

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 20<sup>th</sup> day of June, 2013

CONTRACTOR

Authorized  
Signature

Title

IDEXX LABS.

Perry Geytin

G.M. IDEXX Digital



## City of Austin FSD Purchasing Office

### Certificate of Exemption

DATE: 05/09/2013

DEPT: Austin Animal Center

TO: Purchasing Officer or Designee

FROM: Linda Czisny, DVM

BUYER: Israel Espinoza

PHONE: (512) 978-0581

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

- ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
- ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- ☐ a procurement for personal, professional, or planning services
- ☐ a procurement for work that is performed and paid for by the day as the work progresses
- ☐ a purchase of land or right-of-way
- ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
- ☐ a purchase of rare books, papers, and other library materials for a public library
- ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for
  - cooperative purchasing administered by a regional planning commission established under Chapter 391
  - ☐ services performed by blind or severely disabled persons
  - ☐ goods purchased by a municipality for subsequent retail sale by the municipality
  - ☐ electricity
  - ☐ advertising, other than legal notices
  - ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.



4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex (valuation of other firms, knowledge of market, etc)).

IDEXX is the developer and manufacturer of the IDEXX Digital Imaging System that the City of Austin has purchased for Austin Animal Center. IDEXX has sole knowledge and control of software necessary to run the purchased system. Because of this it is critical that the City of Austin have a maintenance agreement with IDEXX to continue the updating and trouble shooting for this system. No other company is able to provide this proprietary service for this unit. Evaluation of multiple systems had led to the purchase of this unit as the best system for the intended purpose by the Austin Animal Center. It is imperative that the investment in this system is protected by maintenance agreement thru IDEXX.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with IDEXX Laboratories which will cost approximately \$ 31,000.00 (Provide estimate and/or breakdown of cost).

Recommended  
Certification

Kinda Giesy 5/9/13  
Originator Date

Approved  
Certification

Robert Smith 5/10/13  
Department Director or designee Date

\_\_\_\_\_  
Assistant City Manager / General Manager Date  
or designee (if applicable)

Purchasing Review  
(if applicable)

[Signature] 5/10/13 SJA  
Buyer Date Manager Initials

Exemption Authorized  
(if applicable)

\_\_\_\_\_  
Purchasing Officer or designee Date

02/26/2013



April 16, 2013

Israel Espinoza, M.A., Buyer I  
City of Austin – Purchasing Office  
15 Waller Street, Rm 309  
Austin, TX 78702

**Re: IDEXX Digital Extended Maintenance Agreement Sole Source**

I hereby confirm on behalf of IDEXX Laboratories that IDEXX Laboratories, directly or through its affiliate IDEXX Distribution, Inc., is the Sole Source of the IDEXX Digital Extended Maintenance Agreement worldwide and in the United States.

Sincerely,



**Sheri Clement**

IDEXX Laboratories, Inc. | Sr Marketing Manager  
Direct: 207.556.4609 | [sheri-clement@idexx.com](mailto:sheri-clement@idexx.com)