



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 04/29/2015

DEPT: Austin Police Department

TO: Purchasing Officer or Designee

FROM: Albert Banda

BUYER: Erin D'Vincent

PHONE: (512) 658-2354

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)).

This purchase is for a three (3) year maintenance agreement on three (3) Leica FSC Microscopes, Serial Numbers: 264848, 283056, 348832. The maintenance agreements on all three will expire on 7/15/15. The Leica Microscopes are used by the Forensics Division of the Austin Police Department to ensure that the instruments are working properly and for accreditation standards. The service and calibration of these microscopes is critical to the Forensics Lab, therefore in order to ensure the microscopes service and calibration requirements meet the National Institute of Standards and Technology, and have continuity of service and calibration for the microscope, Leica Microsystems Inc., is the only source provider for this service. Leica Microsystems Inc. is the manufacturer and distributor of Leica Confocal & Leica Advanced Fluorescents Microscopes. Authorized Service on these microscopes is only available directly through Leica's service organization.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Leica Microsystems which will cost approximately \$ 21,631.50 (Provide estimate and/or breakdown of cost).

Recommended
Certification

Originator

4/29/15

Date

Approved
Certification

Department Director or designee

4-29-15

Date

Assistant City Manager / General Manager
or designee (if applicable)

Date

Purchasing Review
(if applicable)

Buyer

4/30/15

Date

Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee

Date

02/26/2013

Living up to Life

Leica Microsystems Inc. | 1700 Leider Lane | Buffalo Grove, IL 60089



October 27, 2014

RE: Leica Sole Source – Leica Confocal & Leica Advanced Fluorescents Microscopes

To Whom It May Concern:

Leica Microsystems Inc. is a manufacturer and distributor of Leica Confocal & Leica Advanced Fluorescents Microscopes. Authorized Service on these microscopes is only available directly through Leica's service organization.

Leica's highly trained service engineers are factory certified to repair and provide unmatched knowledge of Leica Confocal & Leica Advanced Fluorescents Microscopes Systems.

We consider ourselves as the Sole Source for parts and service on these devices.

As the equipment manufacturer, our employees have the requisite training to provide specialized service on your equipment. We also own the proprietary software that enables us to provide the required support on these devices.

We appreciate your business and look forward to serving your needs in the future.
Should you have any questions, please do not hesitate to contact us.

Sincerely,

Christina Chang
Service Administrator - Life Science Division
Leica Microsystems, Inc.

PRIMARY PHONE #866-830-0735 Option #2
Direct phone #(847)405-5415

Fax #(847)405-7910
LMS.SA@Leica-Microsystems.Com
<http://www.leica-microsystems.com/>

Leica Microsystems Inc.
1700 Leider Lane
Buffalo Grove, IL 60089
LMS.SA@leica-microsystems.com

Toll-free (866) 830-0735 option # 2
Fax (847) 405-7910
www.leicamicrosystems.com

MA-8700-NS150000041

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND**

**Leica Microsystems, Inc.
For**

Three Year Maintenance Agreement for Three FSC Microscopes, Serial Numbers: 264848, 283056, 348832

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Leica Microsystems, Inc. ("Contractor"), having offices at 1700 Leider Lane, Buffalo Grove, IL 60089.

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 Christina Chang, Phone: (847)405-5415, Email Address: LMS.SA@Leica-Microsystems.com. The City's Contract Manager for the engagement shall be Al Banda, Phone: (512) 974-5273, Email Address: Alberto.Banda@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 the 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 the services in accordance with Exhibit A, Contractors Quotation for Service Contract, dated March 16, 2015.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated in Exhibit A. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$21,631.50 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 the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be e-mailed to the below address:

	City of Austin
Department	Austin Police Department
Attn:	Accounts Payable
Email Address	APDAccountsPayable@austintexas.gov

3.2.2 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 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.3 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.4 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.5 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 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.

3.3.5 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 Final Payment and Close-Out.

3.5.1 The making and acceptance of final payment will constitute:

3.5.1.1 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

3.5.1.2 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. This Contract shall become effective on July 16, 2015 and shall remain in effect for a term of thirty-six (36) months. Annual maintenance agreement prices are firm for the contract period.

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 ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) 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. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. 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 City may request that the Contractor 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 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 in Paragraph 5.1.2, Specific Coverage Requirements, 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 Contractor/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 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

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 CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, 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 WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601

5.1.2.5 **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 B. 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 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.5.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

5.6 **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.

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.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to 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 one year from the acceptance date. If during the warranty period, one or more of the 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 of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

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; and

7.2.2.2 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 City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the 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 disposal of major assets;

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

7.4.3 any significant termination or addition of provider contracts;

7.4.4 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;

7.4.5 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;

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 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 effect on the Contractor's ability to perform thereunder, 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 2nd Street, 4th 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:

Leica Microsystems, Inc.

ATTN: Christina Chung, Contract Manager

1700 Leider Lane

Buffalo Grove, IL 60089

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 in writing signed by both parties. No pre-printed or similar terms on any 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 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.

7.23 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.

7.24 Holidays. The following holidays are observed by the City:

Holiday	Date Observed
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

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 of Austin 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 Vendor 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: <http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/standard-purchase-definitions.pdf>.

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

LEICA MICROSYSTEMS, INC.

By: Mary Micheli
Signature

Name: Mary Micheli
Printed Name

Title: Service Administrator

Date: 8/21/2015

CITY OF AUSTIN

By: Erin D Vincent
Signature

Name: Erin D Vincent
Printed Name

Title: Senior Buyer Specialist

Date: 8-26-15

List of Exhibits

Exhibit A Contractor's Quotation for Service Contract dated June 24, 2015
Exhibit B City's Non Discrimination Certification

EXHIBIT A

Leica Microsystems Inc.
1700 Leider Lane
Buffalo Grove, IL 60089

Telephone (800) 248-0123
Telefax (847) 405-0161



Quotation For Service Agreement

No: 23524321

AUSTIN POLICE DEPT
FORENSICS
812 SPRINGDALE RD
AUSTIN TX 78702

Date: 03/16/2015

Your reference: RENEWAL QUOTE
Reference date: 03/16/2015
Customer no: 1220995
Contact person: GREG KARIM
Telephone no: 512-974-5109
Fax no:

Our reference: 1573MICHELM
Previous contract: WF/IND

Item	Material		Value
0010	Equipment no: 10384024	2,530.00	
	Serial no: 264848	-379.50	7,210.50
	Description: Leica FSC stand with comparison bridge		
	Customers ID:		
3 yr FSC with comparison bridge 264848			
Contract Period: 07/16/2015 To: 07/15/2018			
Agreement Period: 07/16/2015 To: 07/15/2018			
Carried forward			2,150.50

Quotation For Service Agreement

Order no: 23524321

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Item	Material		Value
		Brought forward	2,150.50
0020	Equipment no: 10486495	2,530.00	
	Serial no: 283056	-379.50	7,210.50
	Description: Leica FSC stand with comparison bridge		
	Customers ID:		
3 yr FSC with comparison bridge 283056			
Contract Period: 07/16/2015 To: 07/15/2018			
Agreement Period: 07/16/2015 To: 07/15/2018			
0030	Equipment no: 11161593	2,530.00	
	Serial no: 348832	-379.50	7,210.50
	Description: Leica FSC stand with comparison bridge		
	Customers ID:		
3 yr FSC with comparison bridge 348832			
Contract Period: 07/16/2015 To: 07/15/2018			
Agreement Period: 07/16/2015 To: 07/15/2018			
Total:			6,451.50
Grand total:			21,631.50

Quotation For Service Agreement

Order no: 23524321

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Item	Material	Value
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Your specific quotation conditions

Currency:	USD
Prices:	All item prices excl. TAX
Incoterms:	FOB SHIPPING PT PP & ADD
Payment terms:	30 days from date of invoice
Quotation valid until:	07/15/2015
	Quotation valid 30 days from estimate date.

Other remarks:

Premium Care Service Plan coverage:

3 Leica FSC stand with comparison bridge
sn # 264848, 283056 and 348832

Multi year discount of 5%

One year contract per unit is \$2,530.00 minus 5% (\$126.50).

\$2,530.00

- \$126.50

\$2,403.50 per unit

$\$2,403.50 \times 3 = \$7,210.50$ for all 3 contracts for 1 year.

Total for all 3 systems for 3 years is \$21,631.50

-Unlimited service visits by Leica-Microsystems trained and qualified field service engineer

-Unlimited Replacement service parts, components, or modules necessary for repairs

-1 Annual on-site Planned Maintenance visit, to ensure the system is performing to factory specifications

-Unlimited access to expert Applications and Technology Support Center (M-F 8am-5P)

-Software Updates

-10% discount on other service activities (i.e. System moves, repairs not due to normal use)

-1 Annual ISO 17025 calibration during the planned maintenance, (if applicable)

Leica standard sales terms and conditions apply. The full text can be found at

Services Terms & Conditions



1. Agreement

These terms and conditions shall govern all Orders placed for Services by Customer subject to Leica's Quota # 23524321. For Services and during the Contract Period set forth herein and shall supersede and replace all prior agreements between the parties ("Agreement"). Leica reserves the right to change or modify these terms at any time, which changes can be found at <http://support.leica-microsystems.com/US/ServiceContract/Welcome>. All Services contemplated hereunder are for post-warranty maintenance and support of Leica Instruments only.

2. Definitions

As used herein and as applicable to all Orders placed under this Agreement:

"Contract Period" shall mean the time period of coverage for the applicable Services as set forth for each instrument (s) on the Quota.

"Critical Hardware Upgrade" means an OEM factory recommended upgrade where lack of the upgrade will impair instrument performance.

"Customer" shall mean the customer receiving the Services as indicated on the attached Quota.

"Leica" shall mean Leica Microsystems, Inc. for the purposes of Services provided in the United States of America; or Leica Microsystems (Canada), Inc. for the purposes of Services provided in Canada.

"Non-Critical Hardware Upgrade" means any upgrade that is not crucial for functionality of an instrument.

"Critical Software Update" means an OEM factory recommended update where lack of the update will impair instrument performance.

"Non-Critical Update" means any update that is not crucial for functionality of an instrument.

"On-Call Service" means remote services, provided upon request by Customer, to inspect, evaluate and repair instrument malfunctions.

"Order" shall mean any transactional document or purchase order under which Customer may purchase a Service Package for a Leica Instrument and which incorporates these Terms and Conditions.

"Preventative Maintenance Services" shall mean the set number of scheduled standard maintenance inspections to be provided on an instrument, as referenced on the applicable Quota for Services.

"Products" shall collectively refer to and include the following:

"Consumables" means consumable materials and other products which may be used in conjunction with Leica instruments; "Instruments" means the equipment, system, or other instruments provided and/or manufactured by Leica and all operating systems or other software which may be associated therewith; "Reagents" means liquid materials in its application state which may be used in conjunction with Leica instruments; and "Software" means any and all Leica proprietary computer programs, operating software, firmware or other software applications which are either embedded into an instrument or provided as an application licensed to Customer or hereunder.

"Quota" shall mean the proposal for Services issued by Leica to Customer, which sets forth pricing, Service Package selections and applicable Contract Periods for each instrument which incorporates these Services Terms and Conditions.

"Services" shall mean collectively any installation, mechanical support, On-Call or Preventative Maintenance Services provided to Customer under this Agreement.

"Service Package" shall mean the complete service offering set forth on the Quota, which shall be either Gold or Silver, Gold, Silver, Bronze, Platinum, or other applicable service level offering, a current description of which is set forth on Schedule A as attached hereto. Service Packages may be subject to change or customization, in Leica's sole discretion.

"Software Update" means a patch or minor improvement to a version of Software already installed on an instrument.

"Software Upgrade" means a replacement of an older version of Software.

"User Maintenance" shall mean and include all standard and routine operator maintenance required to be performed by Customer as set forth in the applicable Leica Instruction Manual provided with or made available for each instrument.

3. Maintenance Support

Leica agrees to provide the Services for Leica Instruments, including scheduled Maintenance Services inspections and On-Call Service requests, during normal weekdays, Monday through Friday, excluding Leica observed holidays, and during normal working hours of 8:00am to 5:00pm local time. Subject to the availability of personnel, after hours service is available upon request at an additional charge. Customer acknowledges that the instruments may not be available for use during scheduled maintenance and service visits and that Leica shall not be liable for such instrument downtime. Preventative Maintenance Services must be requested and scheduled directly by Customer. The place of performance for Services shall be either the Customer's facility or the nearest Leica authorized service center or such other place as determined by Leica in its sole discretion. While every effort will be made to render Services promptly, Leica does not make any guarantee regarding specific response times to Service requests, or instrument up time minimums. Services are not offered or provided on Consumables, Reagents or other third party products.

4. Additional Services

As mutually agreed upon between the parties, or subject to Customer's written request, additional Services which are not otherwise included in a specific Service Package, may be provided by Leica upon Customer request, and shall be subject to Leica's then current and generally available time and materials rates and pricing for:

labor, travel and waiting time, travel expenses, parts and materials, shipping and packaging, installation for additional instruments, modifications and improvements, requested re-installation and re-installation of an instrument, optional instrument specific services, and other items as applicable. Additional Services may also be subject to additional terms and conditions which may be separately agreed upon in writing.

5. Instrument Upgrades

Critical hardware upgrades and critical software updates will be provided at the earliest availability. Non-critical Software updates will be provided at the next scheduled maintenance or repair visit, but may not be scheduled independently. Non-critical hardware upgrades and software upgrades will be provided as an Additional Service.

6. Pre-existing Conditions

Any instrument which has not been maintained under a Leica warranty or previous Agreement by Leica immediately prior to the date of this Agreement, must be subject to inspection, certification and acceptance by Leica, and if necessary, repaired or reconditioned such that the instrument meets Leica's standards for continued maintenance and support.

7. Customer Responsibilities

At all times while the instrument is covered by an applicable Service Package and the Customer must adhere to the following:

- Ensure that the instrument is operated at all times by trained personnel in accordance with its applicable Leica Instruction Manual.
- Perform all required User Maintenance and schedule periodic Preventative Maintenance Service visits with Leica.
- Notify Leica immediately through Leica's designated telephone support contact numbers of any malfunction or inoperability of an instrument and promptly provide a full description of the fault or problem.
- Customer must provide Leica with ninety (90) days written notice of intent to move any instrument.

8. Service Visit Requirements

Prior to any service visit by Leica personnel, Customer must:

- Ensure that Leica has complete, accompanied access to the instrument at the times mutually agreed and scheduled for the service. Any delay or waiting time may be subject to additional fees.
- Provide required working conditions and facilities (including heat, light, ventilation, and electrical supplies, telephone and communication access) for use by Leica personnel.
- Customer or shall ensure that any third party auxiliary equipment which is added to or positioned near the instrument is removed or adequately protected. Customer shall also implement other safeguards to protect all programming, programs, data and other removable storage media before an instrument is to be repaired. In the event of the failure of Customer to remove or protect such auxiliary equipment, Leica shall not be responsible for any accidental damage thereto.
- At the time of service visit, notify Leica's personnel of any hazardous or dangerous environments within the vicinity of the instrument and instruct and assist Leica's personnel to prevent access to same.

9. Pricing

- Fees. All Service Fees, as set forth on the Quota, shall remain firm for the duration of the Contract Period. Additional fees may be invoiced for Additional Services as required. All pricing for any applicable extension of the Contract Term may be subject to change.
- Payment. Unless otherwise set forth on the applicable Quota, Payment terms are net thirty (30) days from date of invoice. Past due balances are subject to a service charge of one and one-half percent (1 1/2%) per month or the highest rate allowed by law, whichever is lower. Customer shall notify Leica of any inconsistent and / or disputed amounts within thirty (30) days from date of invoice. Customer waives its right to dispute charges after this time frame.
- Taxes. All Service Fees are inclusive of any applicable, state tax, goods and services tax, value added tax, or any similar taxes or other charges. Customer is responsible for all taxes, duties, fees and expenses imposed by federal, state or local governmental entities, applicable to the Services furnished hereunder or in lieu thereof, Where Customer is exempt from such taxes, Customer shall provide Leica with a tax exemption certificate acceptable to and considered valid by the applicable taxing authorities prior to issuing any applicable purchase order related to this Agreement.

10. Termination

- For Convenience. Either party may terminate this Agreement upon sixty (60) days' written notice.
- Biohazard Contamination. In the event an instrument comes in contact with an agent classified Biohazard Level II or above by the US Department of Health and Human Services, Centers for Disease Control and Prevention, Customer shall immediately notify Leica to identify a remedial course of action if no pre-established protocols to service the instrument apply, but Leica shall have no obligation to provide Services on such instrument.

Services Terms & Conditions



(d) Beyond Repair: In the event that Leica determined that the cost to repair an instrument exceeds its fair market value, Leica has the right to terminate the Agreement and Leica will refund to Customer the remaining prorated amount of the fees already paid during the applicable Contract Period.

11. Standard of Service

Leica represents and warrants that the Services provided under this Agreement will be performed in a workmanlike and professional manner with reasonable skill, care and diligence, all in accordance with prudent industry practices and standards and otherwise in accordance with this Agreement and in compliance with applicable laws. All Services shall be provided by an authorized Leica representative subject to the fees set forth under the applicable Quote and Service Plan for the affected instrument(s). Services, including repair parts, shall be warranted for the period as set forth on Schedule A. Customer's sole remedy for breach of said warranty shall be a replacement of the Service. Leica does not warrant that the Service will render an instrument to be error free, or that continued use and operation of the instrument will be uninterrupted. Leica telephone support or remote troubleshooting support shall be provided "as is" without warranty of any kind. The foregoing warranties are exclusions and in lieu of all other warranties, whether written, oral, express, implied, or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

12. Exclusions

Service support shall not apply to any defect or performance deficiency on a Product (including failure to conform to Product descriptions or specifications) which results, in whole or in part, from (1) misapplied storage or handling of the Product by Customer, or employees, agents, or contractors, (2) failure of Customer to prepare or maintain the site, provide power requirements or operating environmental conditions in accordance with any applicable instructions or recommendations of Leica, (3) adverse power conditions or environmental conditions such as static power, voltage spikes, RF or magnetic interference, HVAC failure or other cause beyond the reasonable control of the Leica, (4) absence of any Product, component, or accessory recommended by Leica but omitted or removed at Customer's direction, (5) any misuse, alteration or damage to the Product by persons other than Leica, (6) combining Leica's Product with any product furnished by others, or with incompatible Products, where such combination causes failure of or degradation to performance of Leica's Product (including the substitution of any reagent not authorized by Leica), (7) improper or extraordinary use of the Product, improper maintenance of the Product, failure to maintain the Product or comply with any applicable instructions or user manuals provided by Leica; or (8) if any service, repair or replacement of an instrument was performed or attempted by personnel not authorized by Leica.

13. Replacement Parts

Replacement parts will be provided only as required or on an exchange of new part basis. Leica reserves the right to use refurbished material or parts for all repairs for instruments covered by a Service Plan. Warranty of refurbished items is not limited compared to new items. Labor to install any replacement parts is included as part of the Service. All parts which become subject to removal and replacement shall become the property of Leica. Consumables, and Reagent items are not eligible for replacement under this Agreement.

14. Limitation of Liability

Leica's entire liability and Customer's exclusive remedy for damages, for any cause whatsoever, regardless of the form of action, whether in contract or in tort, during any three month period shall be limited to the amount of \$50,000. Further, no condition in this section shall be effective to the extent prohibited under applicable laws. The aforementioned limitation shall not apply to indemnification obligations hereunder or damages resulting from the gross negligence, bad faith or willful misconduct of a party or its personnel.

15. Remedies

Without limiting its remedies under existing law, Leica may, in the event of a Material Breach by Customer, and in its sole discretion, pursue any or all of the following remedies: (a) suspend or cancel its performance hereunder, including any pending Services; (b) declare all unpaid balances, payments and expenses due or to become due hereunder immediately due and owing; (c) terminate this Agreement without additional liability or obligation to Customer; (d) seek any other cumulative remedies at law or in equity; or (e) exercise any all rights and remedies available to a secured creditor under the Uniform Commercial Code. The foregoing remedies are cumulative, and may be exercised by Leica, in whole or in part, at Leica's sole discretion. The substantially prevailing party shall be entitled to its attorneys' fees, costs, and expenses (including expert expenses) in connection with any claims, causes of action or litigation.

16. Compliance

Customer shall comply with the terms of the Occupational Safety and Health Act, the Federal Hazardous Material Regulations and any other statutory regulations, including applicable privacy regulations governing the use of the instrument(s). Neither party to this Agreement nor shall engage in any activity prohibited by anti-bribe, anti-trust, federal, or any other federal, state or local law or regulation which relate to health care and/or the performance of services under this Agreement, as these regulations now exist or as subsequently amended, renumbered or revised.

17. Governing Law

This Agreement shall be governed by and construed in accordance with the venue and jurisdiction must reside in Texas, Tarrant County per City Ordinance. For the purposes of Services provided in Canada, this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (excluding any conflict of law rule or principle of such laws that might relate such interpretation not anteceded to the laws of another jurisdiction).

18. Force Majeure

Except as expressly stated in this Agreement, neither party shall be liable for any failure to perform hereunder (other than the payment of sums due and owing) due to labor strikes, lockouts, fires, floods, water damage, riots, government acts or orders, interruption of transportation, inability to obtain material upon reasonable prices of terms, or any other causes beyond its control.

19. Severability Waiver

In the event that any one or more provisions contained herein (other than the provisions obligating Customer to pay Leica for the Services) shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. A party's failure to enforce, or waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision.

20. Notices

Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received three (3) days after being sent via registered mail with return receipt requested, by courier, by first-class mail, postage prepaid. Copies may be sent via email (with evidence of receipt required) at the addresses specified on the applicable Quote for the respective parties or at such other address as either party may from time to time designate to the other in writing.

21. Assignment

This Agreement may not be assigned by either party without the prior written consent of the other party, which shall not be unreasonably withheld. Notwithstanding any provision of this Agreement to the contrary, either party shall have the right to assign or otherwise transfer its interest under this Agreement, without consent of the other party, to any of its affiliated entities or to any entity to which a party may sell, transfer, convey, assign or lease substantially all of its assets or properties used in connection with its performance under the Agreement. Any other assignment of the Agreement without the express written consent of the other party will be invalid.

22. Independent Contractor

Leica is performing the Services as an independent contractor and not as an employee of Customer and none of Leica's personnel shall be entitled to receive any compensation, benefits or other incidents of employment from Customer. Nothing in this Agreement shall be deemed to constitute a partnership, joint venture, or agency relationship between Customer and Leica. Neither Leica nor Customer shall be or become liable or bound by any representation, act or omission whatsoever of the other.

23. Confidentiality

This Agreement, an Order and any material transmitted herewith may contain information confidential or otherwise to either party, its subsidiaries or affiliates ("Confidential Information") and such information is not to be used by the receiving party other than the purpose for which it was transmitted by the disclosing party. Each party shall (1) hold such information in strictest confidence and not disclose such information to third parties without prior, written consent of the disclosing party; and (2) not collect, access, return use or share the Confidential Information other than for performance of the Services under this Agreement.

24. Language

The parties hereby acknowledge and agree that this Agreement and all related documents be in the English language only. Les parties s'entendent reconnaître avoir écrits ces documents et les documents qui y sont relatifs en une seule langue anglaise seulement.

Austin Police Department

Signature: _____

Print Name: _____

Leica Services Terms v1 6/27/2012 2

Mary Michele
Munich
Service Administration
8/21/2015

EXHIBIT B
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 21 day of August, 2015

CONTRACTOR

Authorized
Signature

Title

Leica Microsystems
Myra Mitchell
Service Administrator