

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
Qiagen, Inc.  
For  
Preventative Maintenance and Service Agreement for QIAgility HEPA/UV 1126  
Contract Number: NS160000019**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Qiagen, Inc. ("Contractor"), having offices at 19300 Germantown Rd., Germantown, MD 20874.

**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 Marsha Simpson, Phone: (661) 702-3557, Email Address: Marsha.Simpson@Qiagen.com. The City's Contract Manager for the engagement shall be Albert 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 tasks listed on Contractor's Offer, attached hereto as Exhibit A, and as follows:

2.2.1 **Service:** The Service includes preventative maintenance for the Equipment as described in Contractor's Offer. Service shall not include corrective maintenance in the event of interruption in the operation of the Equipment. It shall be at Contractor's option to utilize new or refurbished part(s) to accomplish such maintenance. Any part replaced by Contractor during service shall become the property of Contractor and City shall ensure that Contractor may take title to such part clear of any interest, lien, or encumbrance of any third party or shall in the alternative indemnify Contractor to the value of the replacement cost of such part.

**SECTION 3. COMPENSATION**

3.1 **Contract Amount.** The Contractor will be paid as indicated herein. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$3,493.50 per year for all fees and expenses for a total contract amount of \$10,480.50. The Contractor shall submit invoices annually in advance to the City for the term of the Contract. Payment in full for all invoices shall be due within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

**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 mailed to the below address:

	City of Austin
Department	Austin Police Department
Attn:	Alberto Banda
Address	P.O. Box 1088
City, State, Zip Code	Austin, Texas 78767

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

3.2.3 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.

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

**Term of Contract.** This Contract shall become effective on February 2, 2016 ("Effective Date") and shall remain in effect until February 1, 2019 or until the City terminates the contract.

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, or equivalent coverage.

**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 **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.

5.7 **Software License:** The software contained in the equipment or part(s) ("Software"), if any, shall be disclosed to City in confidence and shall be licensed to City for City's internal use only and for the life of the equipment or part(s). City agrees that the Software is the intellectual and proprietary property of Qiagen or its licensor. City agrees not to copy, reproduce, or modify the Software and shall not make the Software available to any other parties by means of sale, lease, rental, license or otherwise, without the prior, written consent of Qiagen. City further agrees not to alter or remove any copyright, trade secret, patent, proprietary and/or other legal notices contained in the Software.

## 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 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 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

**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 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:

Qiagen, Inc.

ATTN: Martha Simpson, Contract Manager

19300 Germantown Rd.

Germantown, MD 20874

**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 **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.

7.22 **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.

7.23 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
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.

**7.24 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.

**7.25 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.

**7.26 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>.

**7.27 Order of Precedence.** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.27.1 The Contract;

7.27.2 Exhibit A, Contractor's Quotation dated December 28, 2015

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

QIAGEN, INC.

By: *Eileen Van Acst*  
Signature

Name: EILEEN VAN ACST  
Printed Name

Title: MANAGER, CUSTOM

Date: 02/05/2016

CITY OF AUSTIN

By: *Monica McClure*  
Signature

Name: Monica McClure  
Printed Name

Title: Corporate Contract Administrator

Date: 2/4/2016

## List of Exhibits

- |           |   |
|-----------|---|
| Exhibit A | Qiagen Quotation dated December 28, 2015 and<br>General Terms and Conditions for Support Agreements Pricing Agreement |
| Exhibit B | Non Discrimination Certification  |

EXHIBIT A

Service Agreement: MLS12282015B  
12.28.15



**Service Agreement MLS12282015B**

Customer address            Austin Police Department  
   DNA Section  
   812 Springdale Road  
  
   78701 Austin

Represented by            Mr. Alberto Banda  
Phone                         +1 (512) 974-5273  
   Alberto.Banda@austintexas.gov

This agreement is valid for the following instrument:  
QIAgility HEPA / UV (incl.Laptop), 1126

Description	Cat. No.	Payment	List price [USD]	Discount [%]	Quote price [USD]	Total price [USD]
QIAgility, Full Agreement	9241763	annually	12,330.00	15.00%	3,493.50	10,480.50
Validity 02.02.16 - 02.01.19						
Repair service delivery: onsite						
Service response time (repair): 48 hours/2 business days						
Periodic inspection/maintenance: yes, 1/agreement year						
Inspection/maintenance delivery: onsite						
Cost coverage for repair parts: yes, full coverage						
Cost coverage for labor: yes, full coverage						
Cost coverage for travel: yes, full coverage						
Replacement system (Loaner) provision: not applicable						
Transportation cost coverage: not applicable						
<b>Total (excl tax)</b>						<b>10,480.50</b>

QIAgility 1126- EFF: 02/02/2015-02/01/2019  
multi year discount given.

## General Terms and Conditions for Support Agreements

### 1. DEFINITIONS

(a) "QIAGEN" means QIAGEN Inc.

(b) "Equipment" means molecular biology robotic workstations and/or other instrumentation as specifically designated in attached quotation.

(c) "Service" means activities performed by QIAGEN, or by QIAGEN's authorized representative, including, but not limited to, removal, maintenance, repair, overhaul, replacement and inspection of Equipment.

(d) "Part(s)" means the component good(s) sold or otherwise delivered to Customer by QIAGEN as may be required for the Service.

(e) "Customer" means any person or entity placing an order with QIAGEN for Equipment, Service or Parts.

(f) "Support Agreement" means the agreement entered into by Customer and QIAGEN for Services and/or Parts.

(g) "Response time" means the time from receipt of Customer's request for support to QIAGEN's dispatch of a replacement Part(s). In the event that QIAGEN determines in its sole discretion that a Service Specialist should be dispatched, QIAGEN will use commercially reasonable efforts to have the Service Specialist on site within the same period of time.

### 2. TERMS AND CONDITIONS

(a) The Support Agreement shall be comprised of the attached quotation, if any, and these Terms and Conditions ("Terms"). All other terms or conditions of service, purchase, sales or otherwise shall be binding only with the specific written consent of QIAGEN. Any other terms, conditions or provisions, whether proposed by Customer orally or in writing, shall be of no effect and the sale of Part(s) or performance of Service by QIAGEN shall not constitute acceptance of such other terms, conditions or provisions. These Terms shall override and supersede any previous negotiations, agreement or arrangement between QIAGEN and Customer in relation to the supply of the Service and/or Part(s).

(b) Unless specifically agreed in writing and signed by the Regional Service Director of QIAGEN, information and advice given orally or contained in QIAGEN's publicity material, advertisements, catalogues or correspondence between QIAGEN and Customer outside of any period of Service coverage is given gratuitously and without liability on the part of QIAGEN and shall not form part of the Support Agreement.

(c) Except as specifically stated in the Support Agreement, or as expressly agreed to in writing and signed by a Regional Service Director of QIAGEN, QIAGEN makes no warranty or representation (whether express or implied by statute, law, custom or usage) as to the nature, quality or fitness of Part(s) or as to their conformity with any description or sample.

### 3. ELIGIBILITY

(a) Equipment is automatically deemed eligible for inclusion under a Support Agreement, provided that it is located in North America and covered by a valid QIAGEN warranty or pre-existing QIAGEN Support Agreement immediately prior to the commencement date of the new coverage period.

(b) Equipment not falling within clause 3(a) shall be subject to inspection and possible repair by QIAGEN, before being deemed eligible for inclusion under a Support Agreement. Customer shall be charged QIAGEN's standard rates in effect at that time for all labor, Part(s), and other expenses incurred for this inspection and for any corrective maintenance required to restore the Equipment to a state of eligibility for inclusion under a Support Agreement. QIAGEN shall notify Customer of its approval to proceed with purchase of Support Agreement. The Support Agreement shall be purchased within thirty (30) days of such approval, and the commencement date of the Support Agreement shall be designated at the day following such approval. If the purchase of the Support Agreement is not accomplished within such thirty (30) days, another inspection and approval shall be required by QIAGEN and shall be performed at QIAGEN's standard rates.

(c) Unless otherwise specifically agreed in writing by QIAGEN, the Support Agreement will not cover any Equipment: (i) which has been misused, or subjected to unusual physical or electrical stress; (ii) which is modified by Customer without the prior consent of QIAGEN; (iii) which has been serviced, or had service attempted, by anyone other than QIAGEN, or QIAGEN's authorized representative; (iv) which has been relocated without the prior consent of QIAGEN; (v) which resides in a location where QIAGEN has insufficient resources to provide adequate support; or (vi) which has been used for more than seven (7) years from declaration by QIAGEN as obsolete.

### 4. COMMENCEMENT AND TERM

(a) Unless otherwise specified in writing by QIAGEN, any quotation for Service or Support Agreement submitted to Customer by QIAGEN is firm for, and will expire, sixty (60) days after the date of its issuance. The Support Agreement will be effective (a) as of the date herein specified or (b) as of the date QIAGEN commences the Service or supplies Part(s), whichever is the earlier ("Start Date").

(b) The Support Agreement shall be effective for the period described in the Validity column of the attached quotation, if any, subject to earlier termination as provided for in clause 16. Otherwise, the Support Agreement shall be effective for the period of one (1) year from the Start Date subject to earlier termination as provided for in clause 16. The Support Agreement may be renewed at the same terms upon the mutual written consent of the parties.

### 5. SERVICE

(a) To keep the Equipment in good operating condition, QIAGEN agrees to provide Customer with the Service under the Support Agreement. The Service includes preventive maintenance for the Equipment as described in the Support Agreement. Unless expressly stipulated in the Support Agreement, Service shall not include corrective maintenance in the event of interruption in the operation of the Equipment. It shall be at QIAGEN's option to utilize new or refurbished Part(s) to accomplish such maintenance. Any part replaced by QIAGEN during Service shall become the property of QIAGEN and Customer shall ensure that QIAGEN may take title to such part clear of any interest, claim, lien or encumbrance of any third party or shall in the alternative indemnify QIAGEN to the value of the replacement cost of such part.

(b) All Service shall be performed during QIAGEN's normal working hours, i.e. 8:00 AM to 5:00 PM in the time zone where work is to be performed, Monday to Friday (except for QIAGEN's published or National holidays), unless otherwise expressly agreed in writing by QIAGEN.

(c) For Services performed or Parts delivered not required by this Support Agreement, QIAGEN's standard rates will apply. QIAGEN may subcontract its duties hereunder to a third party without the consent of Customer.

Unless expressly stated in the Support Agreement, coverage does not include (i) the supply of consumables and accessories (including, without limitation, lamps, glass parts, paper, filters, syringes, peristaltic pump tubings, air filters, diskettes, ink

ribbons, lighting connections, columns, thermostatic plates, detectors, spacers and chemicals); (ii) the recovery of data in the event of loss or damage to data carriers (including without limitation hard drives) and/or software; (iii) modification to or relocation of Equipment; or (iv) application assistance for protocol/method development or Customer training. Any of the foregoing if not covered by the Support Agreement can be quoted and performed separately by QIAGEN.

#### 6. CUSTOMER'S RESPONSIBILITIES

(a) Customer shall maintain an Appropriate Environment for the Equipment and shall perform the necessary preventive maintenance for the Equipment, according to the procedures specified by QIAGEN, to prevent Equipment failure, including without limitation the leakage of lubricating fluids, hydraulic fluids and oils. "Appropriate Environment" means, but is not limited to, the storage or operation of the Equipment on a level surface, free of impacts and shocks, and in an ambient atmosphere the temperature, pressure and particle content of which have at all times been within the tolerances of the Equipment as specified by QIAGEN.

(b) If the Support Agreement includes corrective maintenance or repair, Customer shall promptly notify QIAGEN of Equipment failure and allow QIAGEN on request full and free access to the Equipment, subject to compliance with the applicable site policies.

(c) Customer shall provide the consumable supplies which are required for the Service, unless otherwise noted in the Support Agreement. Upon request by QIAGEN, Customer agrees to provide reasonable facilities, required for the Service, such as secure storage space, a designated work area with adequate heat and lighting, and a local telephone line.

(d) Customer shall save a backup file of data, including, without limitation, parameter and performance data for the Equipment before the Service is provided by QIAGEN. In addition Customer shall be responsible for removing any Protected Health Information from the instrument prior to service.

(e) Customer shall confirm after the Service is provided by QIAGEN that the Equipment is in good operating condition and is functioning as intended.

(f) Customer shall maintain a safe working environment for QIAGEN's service personnel and provide them with any appropriate information for the measures to take in case of an emergency.

(g) Customer shall designate a contact person who is suitably experienced with the Equipment.

#### 7. DELIVERY AND PERFORMANCE

(a) Dates and time given for completion of Service or delivery of Part(s) are given as estimates only and shall not constitute a term or condition of the Support Agreement. Time shall not be of the essence. While QIAGEN will use commercially reasonable efforts to meet any time estimate, it reserves the right to amend any estimate.

(b) QIAGEN will deliver Part(s) in such installments as it considers expedient. Failure by QIAGEN to deliver one or more installments shall not entitle Customer to claim compensation or to terminate or suspend the Support Agreement or reject those or subsequent deliveries.

(c) Unless otherwise stipulated in the quotation, delivery of any Part(s) hereunder shall be made FCA QIAGEN's facility. (d) Customer shall, until payment in full has been made, keep Part(s) in good merchantable condition and fully insure them on QIAGEN's behalf for not less than the price payable to QIAGEN and all the proceeds of such insurance shall be held automatically in favor of QIAGEN. Customer grants QIAGEN an irrevocable license to enter Customer's premises to recover any Part(s) or other materials which are QIAGEN's property.

#### 8. PRICES

Prices for the Support Agreement shall be the lesser of QIAGEN's List Price in effect at the time of the Start Date or the price listed on the quotation attached hereto. Unless otherwise specified in writing by QIAGEN, the price of the Support Agreement, Service, or Parts are exclusive of transportation, insurance, license fees, customs duties, or sales, use, excise or other similar taxes. Customer shall pay all such duties or taxes except for the taxes imposed on QIAGEN's net income.

#### 9. PAYMENT

The payment for the Support Agreement shall be made by Customer net (a) in accordance with the payment conditions set forth on the quotation attached hereto, if any, or, (b) failing any such conditions being specified therein and in the case of Services or Part(s) being supplied outside the scope of the Support Agreement, thirty (30) days after the invoice date.

#### 10. WARRANTY

(a) QIAGEN warrants that Part(s) shall be free from defects and conform to QIAGEN's specifications, if any, under normal use and service for a period of three (3) months from the date of receipt by Customer. This warranty shall not cover consumable goods in normal use or those of limited life, and QIAGEN only warrants that, at the time of shipment, such goods meet applicable specifications furnished or approved by QIAGEN.

(b) QIAGEN warrants that any Service or other work performed by it shall be carried out by specially trained and equipped QIAGEN personnel.

(c) The foregoing warranties are exclusive and in lieu of all other warranties, whether expressed or implied, written or oral, statutory or otherwise, including, without limitation, any implied warranty of satisfactory quality or fitness for a particular purpose or merchantability.

#### 11. HEALTH AND SAFETY

(a) Customer shall ensure that its employees, subcontractors and agents working in the immediate and adjacent areas where the Equipment is located are adequately trained in and comply with all relevant and applicable health and safety regulations. Customer will further ensure that an appropriately trained employee of Customer or third-party authorized by Customer remains within visual range of QIAGEN's personnel during the performance of Service on the Equipment.

(b) Without limiting the generality of the foregoing, Customer shall ensure that the Equipment is disinfected and decontaminated prior to the performance of Service thereon by QIAGEN's personnel.

#### 12. LIMITATION OF LIABILITY

IN NO EVENT SHALL QIAGEN BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROPERTY, LOSS OF PROFITS OR PRODUCTION DAMAGES RESULTING FROM THE EQUIPMENT OR PARTS, OR CAUSED BY INSTALLATION, MAINTENANCE OR OTHER PERFORMANCE BY QIAGEN UNDER THESE TERMS AND THE SUPPORT AGREEMENT, WHETHER A CLAIM FOR SUCH DAMAGES IS BASED UPON WARRANTY, CONTRACT OR TORT. SAVE IN RESPECT OF PERSONAL INJURY OR DEATH caused by QIAGEN's gross

negligence or willful misconduct, QIAGEN's TOTAL LIABILITY FOR LOSS OR DAMAGE ARISING OUT OF OR IN RELATION TO THE SUPPORT AGREEMENT SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY CUSTOMER TO QIAGEN WITH REGARD TO THE SUPPORT AGREEMENT. ANY CLAIM FROM THE CUSTOMER SHALL BE TIME BARRED ONE YEAR AFTER THE DAMAGE WAS CAUSED.

#### 13. SOFTWARE LICENCE

The Software contained in the Equipment or Part(s) ("Software"), if any, shall be disclosed to Customer in confidence and shall be licensed to Customer for Customer's internal use only and for the life of the Equipment or Part(s). Customer agrees that the Software is the intellectual and proprietary property of QIAGEN or its licensor and that the title to, ownership of and the copyright of the Software shall remain with QIAGEN or its licensor. Customer agrees not to copy, reproduce or modify the Software and shall not make the Software available to any other parties by means of sale, lease, rental, licence or otherwise, without the prior written consent of QIAGEN. Customer further agrees not to alter or remove any copyright, trade secret, patent, proprietary and/or other legal notices contained in the Software.

#### 14. CONFIDENTIALITY

Customer agrees to hold in confidence any and all information of a confidential nature regarding QIAGEN's business or affairs, including, without limitation, data provided by QIAGEN regarding the design, structure, or manufacturing methods of the Equipment and Part(s) and agrees not to disclose the same to any person, firm or corporation. The foregoing confidentiality obligation of Customer shall not be applicable, if Customer can demonstrate that: (i) information is already generally available to the public; (ii) information hereafter becomes generally available to the public, through no fault of Customer; (iii) information was already known to Customer prior to the disclosure thereof by QIAGEN; or (iv) information lawfully becomes known to Customer through a third party.

#### 15. FORCE MAJEURE

Neither party hereto shall be liable for default of any obligation hereunder if such default results from a force majeure event, which includes, without limitation, governmental acts or directives; strikes; acts of God; war; insurrection, riot or civil commotion; fires, flooding or water damage; explosions, embargoes, delays in delivery, or failure to obtain or withdrawal of any export or import license, whether of the kind herein enumerated or otherwise, which are not within the reasonable control of the party affected. Force Majeure does not excuse either Parties' obligation to make payments for Products already received or Services already rendered.

#### 16. TERMINATION

(a) Either party may terminate the Support Agreement: (1) if the other party defaults in its obligation hereunder, provided that such default is not cured within thirty (30) days upon written notice to the defaulting party; (2) any of the following events occurs: (i) distress or execution is levied against any of the other's assets and is not paid or discharged within seven days; or a judgment against the other remains unsatisfied for more than seven (7) days; or a receiver is appointed with respect to any of the other's assets; (ii) a petition is presented for the winding up of, or for an administration order to be made in relation to the other; or a resolution is passed for the other's winding up (other than a members' voluntary winding up for the purposes of a bona fide amalgamation or reconstruction) or (iii) any event in a foreign jurisdiction analogous to, or comparable with, (i) and (ii) above; or (3) in case of the sale or dissolution of the company of the Customer. (b) Except as permitted by clause 16(a), Customer shall not terminate the Support Agreement without the prior written consent of QIAGEN. If Customer seeks early termination for any reason other than those permitted by clause 16(a), Customer shall not be entitled to a refund or credit of any kind. (c) A termination hereunder shall not affect any rights or obligations of either party which have accrued prior to termination. (d) Articles 10 through 15 hereof shall survive the termination of the Support Agreement.

**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 3rd day of February, 2016

CONTRACTOR	<u>For QIAGEN, INC</u>
Authorized Signature	<u>Erika Vandyk</u>
Title	<u>Manager, Customer Care</u>



## City of Austin FSD Purchasing Office Certificate of Exemption

DATE: 12/03/2015 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.

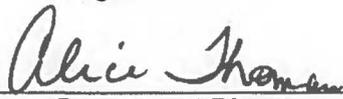
- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. 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).

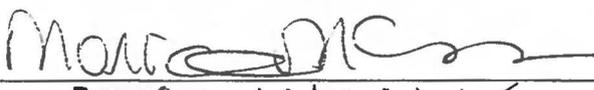
The City of Austin Police Department is purchasing a Repair & Preventative Maintenance Agreement for two QIAgillity System's HEPA/UV SN #1126 & SN #39, from Qiagen Inc., for the APD Forensics Department. The purpose of this instrument is to improve the efficiency of the DNA laboratory. The QIAgillity Systems enables rapid, high-precision automated PCR setup, eliminating the need for tedious manual pipetting steps. The QIAgillity system is distributed exclusively by Qiagen, Inc., therefore they do not allow other vendors to service their systems. This unit was purchased on 1/27/11 on CT870011012700549. Our Current MA's NS130000016 & 17 will expire 2/1/16 & 3/1/16. Qiagen Instrument Service is a professional service offered by Qiagen for the maintenance and service of Qiagen instrumentation. Qiagen is the sole source for service & maintenance for all of the instruments that they sell.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Qiagen Inc. which will cost approximately \$ 20,961.00 (Provide estimate and/or breakdown of cost).

Recommended Certification  12/11/15  
 Originator Date

Approved Certification  12/11/15  
 Department Director or designee Date

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

Purchasing Review (if applicable)                        
 Buyer Contract Administrator Date

  
 Manager Initials

Exemption Authorized (if applicable) \_\_\_\_\_  
 Purchasing Officer or designee Date

02/26/2013