



Amendment No. 2  
of  
Contract No. NS160000066  
for  
Austin Public Health Refrigerator/Freezer Maintenance and Repair  
between  
Thermo Fisher Scientific (Asheville) LLC  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be September 26, 2018 to September 25, 2019. Four extensions remain.
- 2.0 The total contract amount is increased by \$18,000.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 09/26/2016 – 09/25/2017	\$15,000.00	\$15,000.00
Amendment No. 1: Option 1 09/26/2017 – 09/25/2018	\$18,000.00	\$33,000.00
Amendment No. 2: Option 2 09/26/2018 – 09/25/2019	\$18,000.00	\$51,000.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: *Tina Hines*

Printed Name: Tina Hines  
Authorized Representative

Signature: *Cindy Reyes*

Cindy Reyes, Contract Management Specialist III  
City of Austin  
Purchasing Office

Thermo Fisher Scientific (Ashville) LLC  
28 Schenck Pkwy Ste 400  
Asheville, NC 28803



Amendment No. 1  
of  
Contract No. NS160000066  
For  
Austin Public Health Refrigerator/Freezer Maintenance and Repair  
between  
Thermo Fisher Scientific Asheville LLC  
and the  
City of Austin

1.0 The City hereby:

1.1. Exercises the extension option for the above-referenced contract. Effective September 27, 2017, to September 27, 2018, four options remain.

1.2. Updates refrigerator - freezer listing with Exhibit A.

1.3. Order of precedence updated as follows:

1.3.1. Revised City 0300 Terms and Conditions.

1.3.2. Thermo Fisher Scientific Asheville LLC Addendum

1.3.3. The Contract

1.3.4. The City's Certificate of Exemption and supporting documents, including all documents incorporated by reference.

1.3.5. The Contractor's Offer, including subsequent clarifications.

2.0 The total contract amount is increased by \$18,000.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 09/26/2016 – 09/26/2017	\$15,000.00	\$15,000.00
Amendment No. 1: Option 1 09/26/2017 – 09/25/2018	\$18,000.00	\$33,000.00

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature & Date: Tonia Hines 10-05-17 Signature & Date: Marty James 10-05-17

Printed Name: Tonia Hines  
Authorized Representative

Supervisor, Service Dispatch and Billing / 10-05-17

Thermo Fisher Scientific Asheville LLC  
Asheville, NC 28803

Marty James  
Procurement Specialist II

City of Austin  
Purchasing Office  
124 W. 8th Street, Ste. 310  
Austin, Texas 78701

COA HHSD Vaccine Refrigerator and Freezer Storage Units						
Cooling Unit Locations	Manufacturer	COA Tag Number	Serial Number	Date of Purchase / Installation	Model Number	Last Preventative Maintenance / Repair Notes
<b>Refugee Health Services (1000 Toyath St., 78703)</b>						
Refrigerator	Revco	191464	O22S-127644-PS	Feb 27th 2007	REL2304A	3/2/2017
Freezer	Summit		2006113369	Sept, 2013	VT85	
Refrigerator	Revco		155721001160914			3/2/2017
<b>St. Johns Community Center (7500 Blessing Ave, 78752)</b>						
Refrigerator - Double Unit	Revco	191456	W27P-117370-XP	Oct 11th, 2005	REL5004-A	2/26/2016
Freezer	Forma	unable to view	S29T-135253-TT	June 5th, 2008	FFPH2330A19	3/2/2017
Refrigerator - Pedi	Revco		155721201160915	Sep 19th, 2016	REL2304A	3/2/2017
Refrigerator - Adult	Revco		155721101160914	Sep 19th, 2016	REL2304A	3/2/2017
<b>Far South - Rm 110 (405 W. Stassney Ln. 78745)</b>						
Refrigerator - Pedi	Revco	191451	V24P-116835-WP	Aug 31st, 2005	REL2304A	3/2/2017
Refrigerator - Adult	Revco	unable to view	U01P-116167-UP	July 14th, 2005	REL2304A	2/24/2016
Freezer	Forma	160228	T02T-135306-TT	June 6th, 2008	FFPH2330A19	3/2/2017
Refrigerator - Adult	Revco		155728301160916	Sep 9th, 2016	REL2304A	3/2/2017
<b>HHSD Campus Bldg. B (7201 Levander Loop, 78702)</b>						
Refrigerator	Revco	191463	O22S-127643-PS	Februay 27th, 2007	REL2304A	3/1/2017
Freezer A	Forma	160229	T24T-135701-UT	July 8th, 2008	FFPH2330A	3/1/2017
Freezer B	Forma	160227	T20T-135653-TT	June 26th, 2008	FFPH2330A	3/1/2017
<b>DSRIP - RBJ 3rd Floor (15 Waller Street, 78702)</b>						
Refrigerator	Revco		0112974001130921	October 1st, 2013	REL2304A	2/28/2017
Freezer	Forma	OO191475	P18T-134113-PT	April 1st, 2008	FFPH2330A19	2/28/2017
<b>VFC - RBJ 3rd Floor (15 Waller Street, 78702)</b>						
Refrigerator	Revco	191536	P26V-146786-RV	April 6th, 2010	REL2304A	2/28/2017
Freezer	Forma	191476	T23T-135675-UT	July 7th, 2008	FFPH2330A	2/28/2017

Thermo Fisher Contract and Warranty 1-800-438-4851



**CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)  
AND  
THERMO FISHER SCIENTIFIC ASHEVILLE LLC (“Contractor”)  
for  
HHSD Refrigerator/Freezer Maintenance and Repair  
NS160000066**

The City accepts the Contractor’s Offer (as referenced in Section 1.1.3 below) for the above requirement and enters into the following Contract.

This Contract is between THERMO FISHER SCIENTIFIC ASHEVILLE LLC having offices at Asheville, NC 28803 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City (“Effective Date”).

**1.1 This Contract is composed of the following documents:**

- 1.1.1 This Contract
- 1.1.2 The City’s Certificate of Exemption and supporting documents.
- 1.1.3 THERMO FISHER SCIENTIFIC ASHEVILLE LLC Offer, dated August 26, 2016, including subsequent clarifications
- 1.1.4 Clarification that Payment terms are net 30 days from the date of invoice. Reference document 0300, section 13, item A.
- 1.1.5 Exhibit A, Thermo-Fisher Services Addendum.

**1.2 Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 This Contract
- 1.2.2 The City’s Certificate of Exemption and supporting documents, including all documents incorporated by reference
- 1.2.3 The Contractor’s Offer as referenced in Section 1.1.3, including subsequent clarifications.

**1.3 Term of Contract.** The Contract will be in effect for an initial term of twelve (12) months and may be extended thereafter for up to five (5) twelve (12) month extension option(s), subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.

**1.4 Compensation.** The Contractor shall be paid a total Not-to-Exceed amount of \$15,000.00 for the initial Contract term and \$18,000.00 for each extension option. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.



- 1.5 **Quantity of Work.** There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

**THERMO FISHER SCIENTIFIC  
ASHEVILLE LLC**

**CITY OF AUSTIN**

Jessica Carver McIntosh

Printed Name of Authorized Person

Handwritten signature of Jessica Carver McIntosh in blue ink.

Signature

Contract Specialist

Title:

9/26/2016

Date:

Marty James

Printed Name of Authorized Person

Handwritten signature of Marty James in blue ink.

Signature

Buyer II

Title:

09-26-2016

Date:



## City of Austin FSD Purchasing Office

### Certificate of Exemption

DATE: 08/15/2016 DEPT: HHSD Immunizations  
 TO: Purchasing Officer or Designee FROM: Kurt Becker  
 BUYER: Kurt Becker PHONE: 972-5523

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)

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li><input type="radio"/> 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</li> <li><input type="radio"/> a procurement necessary to preserve or protect the public health or safety of municipality's residents</li> <li><input type="radio"/> a procurement necessary because of unforeseen damage to public machinery, equipment, or other property</li> <li><input type="radio"/> a procurement for personal, professional, or planning services</li> <li><input type="radio"/> a procurement for work that is performed and paid for by the day as the work progresses</li> <li><input type="radio"/> a purchase of land or right-of-way</li> <li><input checked="" type="radio"/> 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</li> </ul> | <ul style="list-style-type: none"> <li>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</li> <li><input type="radio"/> a purchase of rare books, papers, and other library materials for a public library</li> <li><input type="radio"/> 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</li> <li><input type="radio"/> 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</li> </ul> |
|---|--|



- 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.

A sole source is requested due to specific and highly skilled qualifications manufacturer Thermofisher posses with our current and future inventory of pharmaceutical grade refrigerators and freezers. Manufacturer will void any current or future warranties if units are maintained or repaired by any non-Thermofisher certified technician.



- The City of Austin HHSD has an inventory of 12 refrigerators and freezers dedicated solely to the purpose of safe storage of public vaccines; all of these units were manufactured by parent company Thermofisher. An additional four Thermofisher units will be added to the inventory in September 2016. As the manufacturer of these units Thermofisher possesses highly specific and unique knowledge, capacity and skills to provide both expertise preventative maintenance and repair services. Finally, Thermofisher warranties are contingent upon only their technicians providing repairs and service; otherwise all warranty claims are null and void. Please refer to the sole source letter provided by Thermofisher for details.

- Page 4 of 4



Austin/Travis County Health and Human Services Department



MEMORANDUM

To: Shannon Jones, HHSD Director

Through: Philip Huang, M.D., HHSD Assistant Director *B.H.*

From: Kurt Becker, Immunization Manager *KB*

Date: August 16, 2016

Subject: Justification and Request for Sole Source Procurement of Thermo Fisher Scientific Service and Maintenance Agreement

Mr. Jones,

Attached please find and review a request to obtain procurement of maintenance and repair service of all vaccine storage units from Thermo Fisher Scientific.

There are currently 12 vaccine storage units within HHSD with two additional slated to be added to our inventory before the end of this fiscal year. Thermo Fisher Scientific is the manufacturer of all units and provides certified technicians to ensure the annual maintenance is performed and repairs are made to the manufacture's specifications. Thermo Fisher Scientific voids any current or future warranty of their products should any non-Thermo Fisher Scientific certified technician perform and technical or maintenance on their manufactured products.

This service from Thermo Fisher Scientific has been provided to HHSD since 2013 and expired in June of this year (previous memo attached for reference). The proposed new contract for "total care" services will be contracted for three two year terms. The cost of this service to HHSD is approximately \$14,000 annually and continues to be paid out of the immunization unit's general fund.

If approved please sign the attached Certificate of Exemption. Please feel free to contact me with any questions or clarifications.

Thank you!

*Kurt S Becker*

Immunization Manager  
Austin/Travis County HHSD

August 15, 2016

Mr. Kurt Becker  
City of Austin  
14050 Summit Drive, Suite 121  
Austin, TX 78728

**RE: Sole Source letter for support plan quotation ISR0044520**

Dear Kurt,

Thermo Fisher Scientific is the sole source equipment manufacturer and service provider for all Thermo Fisher Scientific Revco General Purpose Refrigerators and Forma General Purpose Refrigerators, parts, training, technical support, field service support, and software.

The legal entity for your Thermo Fisher Scientific Revco freezers is Thermo Fisher Scientific Asheville, LLC, which is a part of Thermo Fisher Scientific. Thermo Fisher Scientific is the world leader in lab equipment products, complimented by the most comprehensive services portfolio in the industry. Our equipments solutions enable our customers to make the world healthier, cleaner, and safer.

The equipment [SN P18T-134113-PT, U01P-116167-UP, V24P-116835-WP, O22S-127644-PS, T23T-135675-UT, S29T-135253-TT, W27P-117370-XP, O22S-127643-PS, T20T-135653-TT, T24T-135701-UT, P26V-146786-RV, T02T-135306-TT, 0112974001130921] and any attached peripherals use a technologically advanced method to analyze chemicals and to identify unknown samples. Thermo Fisher Scientific has proprietary rights to the design and software utilized in this instrument. Thermo Fisher Scientific is the only company with access to performance verified component parts, spare parts, software, technical support, upgrades and engineering resources to maintain the original operating specifications for your Thermo Fisher Scientific equipment. Thermo Fisher Scientific Field Service Engineers (FSE's) are the only certified and factory trained engineers available to service the equipments, and are part of an organization that is ISO certified.

The prices listed on the support plan are those charged to any other customer with the same instrument model and age, configuration, and contract type.

We appreciate the opportunity to continue the valued service relationship with you. Please contact me if you have any questions regarding this information.

Sincerely,

*Sheila Patel*

Sheila Patel

## **Unity** Lab Services

**Service Sales Specialist**

**828-365-1324**

**Sheila.patel@thermofisher.com**



**Austin/Travis County Health and Human Services Department**



**Memorandum**

**Date:** January 24, 2013  
**To:** Shannon Jones  
**From:** Kurt Becker, Immunization Manager  
**Subject:** Vaccine Storage CQI

Shannon,

As we discussed today we proposing a three part plan to improve vaccine storage; outlined below are the plans, a cost/benefit overview and plans to cover costs.

**I. Cooling Unit Warranties:**

The program is proposing to enter into a contract with Thermo-Fisher to provide warranty and preventative care maintenance to all 12 HHSD vaccine storage refrigerators and freezers. This will ensure qualified personnel are working on the lab grade cooling units are qualified and any necessary repairs will be covered under the warranty.

**Estimated cost (annually): ~\$9500.00**

**II. Temperature Monitoring:**

We propose to purchase software/hardware materials that will allow the program to view and monitor temps offsite via some type of web interface. The system will also alarm via e-mail, text and phone calls. This would be in addition to Sonitrol/Stanley systems. This will allow our program to have real-time information that we currently do not have, in addition we will have control over call-up lists, as opposed to relying on Sonitrol maintaining current information.

**Estimated initial cost:** (1) Senso-Scientific, ~\$4,000.00 (2) Coldchain Technologies ~\$11,000.00

**Estimated annual servicing:** (1) Senso-Scientific~\$400.00 (2) ColdChain Technologies ~\$1500.00

**III. Additional CQI Measures:**



The program will review posting instructions and notifications on all units to simplify and clarify communications. Procedures TBD

The program will attempt to improve short term and long term environment in vaccine storage locations by: (1) improving ventilation of rooms (2) increase airflow (3) improve placement of cooling units when possible.

**Estimated cost:** Oscillating fans; auto on/off timers; \$100 per unit = ~\$1200.00

**Budget Impact:**

- The program will reduce the general fund budget under "temporary employees" by nearly \$16,000 during CYE in FY2013 and move funds into an "equipment maintenance" line item (or equivalent).
- In FY2014 and beyond the program will permanently decrease the "temporary employee" line item by \$12,000.00 to fund the maintenance, warranty of cooling units and calibration of thermometers.

**Recommendations:**

Our recommendation is to utilize Thermo-Fisher to provide their "Total Care Plan," employ Senso-Scientific for the temperature monitoring, and implement all additional CQI measures. We are in the process of interviewing clients that utilized Senso-Scientific to ensure that service will meet our needs.

With your approval we will proceed with our recommended course of action.

Thank you for your support and consideration,

Kurt

COA HHSD Vaccine Refrigerator and Freezer Storage Units							
Cooling Unit Locations	Manufacturer	COA Tag Number	Serial Number	Date of Purchase / Installation	Model Number	Last Preventative Maintenance / Repair Notes	
<b>Refugee Health Services (1000 Toyath St., 78703)</b>							
Refrigerator	Revco	191464	O22S-127644-PS	Feb 27th 2007	REL2304A	3/7/2016	
Freezer	Summit		2006113369	Sept, 2013	VT85		
Refrigerator							NEW
<b>St. Johns Community Center (7500 Blessing Ave, 78752)</b>							
Refrigerator - Double Unit	Revco	191456	W27P-117370-XP	Oct 11th, 2005	REL5004-A	2/26/2016	REMOVING
Freezer	Forma	unable to view	S29T-135253-TT	June 5th, 2008	FFPH2330A19	2/26/2016	
Refrigerator - Pedi				Sep 19th, 2016			NEW
Refrigerator - Adult				Sep 19th, 2016			NEW
<b>Far South - Rm 110 (405 W. Stassney Ln. 78745)</b>							
Refrigerator - Pedi	Revco	191451	V24P-116835-WP	Aug 31st, 2005	REL2304A	2/24/2016	
Refrigerator - Adult	Revco	unable to view	U01P-116167-UP	July 14th, 2005	REL2304A	2/24/2016	REMOVING
Freezer	Forma	160228	T02T-135306-TT	June 6th, 2008	FFPH2330A19	2/24/2016	
Refrigerator				Sep 9th, 2016			NEW
<b>HHSD Campus Bldg. B (7201 Levander Loop, 78702)</b>							
Refrigerator	Revco	191463	O22S-127643-PS	Februay 27th, 2007	REL2304A	2/28/2016	
Freezer A	Forma	160229	T24T-135701-UT	July 8th, 2008	FFPH2330A	2/28/2016	
Freezer B	Forma	160227	T20T-135653-TT	June 26th, 2008	FFPH2330A	2/28/2016	
<b>DSRIP - RBJ 3rd Floor (15 Waller Street, 78702)</b>							
Refrigerator	Revco		O112974001130921	October 1st, 2013	REL2304A	2/19/2016	
Freezer	Forma	OO191475	P18T-134113-PT	April 1st, 2008	FFPH2330A19	2/19/2016	
<b>VFC - RBJ 3rd Floor (15 Waller Street, 78702)</b>							
Refrigerator	Revco	191536	P26V-146786-RV	April 6th, 2010	REL2304A	2/19/2016	
Freezer	Forma	191476	T23T-135675-UT	July 7th, 2008	FFPH2330A	2/19/2016	

August 26 2016

CONTRACT AGREEMENT SALES REP

Thermo Fisher Scientific  
Asheville LLC  
Bldg 2B, Suite 400  
28 Schenck Parkway  
Asheville, NC  
28803

USA

Contact: Patel, Sheila  
Phone: 1-828-365-1324  
Fax: 877-867-8945

sheila.patel@thermofisher.com

CUSTOMER CONTACT FOR AGREEMENT

Contact: Kurt Becker  
Phone: 512-972-5523  
Fax:  
Email: Kurt.Becker@austintexas.gov

RE: SERVICE MAINTENANCE AGREEMENT NEW / RENEWAL

Dear Valued Customer,  
Enclosed is the Instrument Service Agreement for your Thermo Fisher Scientific Equipment at your facility. We recognize your commitment to provide quality testing and appreciate the opportunity to assist you by providing first rate service for your equipment.

We encourage you to renew or purchase a Service Agreement in order to assure your facility quality test results through scheduled maintenance visits, genuine replacement parts and the services of our factory trained Field Service Engineers.

If you have any questions please contact your Sales Representative (located upper left of this page) at 800-438-4851.

We appreciate your continued support and business.

RENEWING OR PURCHASING COVERAGE IS EASY AS 1-2-3.

- 1) REVIEW YOUR SERVICE AGREEMENT FOR ACCURACY
    - PLEASE MAKE ANY NECESSARY CORRECTIONS ON YOUR SERVICE MAINTENANCE AGREEMENT QUOTE.
  - 2) SIGN THE SERVICE AGREEMENT AND INDICATE THE METHOD OF PAYMENT; PURCHASE ORDER, CREDIT CARD (VISA OR MC) OR CHECK.
    - For purchase order or check payment; please attach a copy of the purchase order or a copy of the check stub listing the check number.
- If your organization does not use purchase orders we will need in writing on company letterhead indicating this. We will also need the billing address for your organization and something to use in place of po , whether it is the date or your initials, etc.
- For credit card payment please contact us at 800-438-4851. It is the company's policy not to accept credit card numbers via email or fax.
- A) FOR NIH SERVICE AGREEMENTs ONLY:
    - Please sign the enclosed Service Agreement and return with a new record of call number for a one year period under the Blanket Purchase Agreement. Thermo Fisher Scientific LLC EIN number is 36-4087754 and DUNS number is 17-075-5479.
  - B) FOR NIH OPEN MARKET use contract number HHSN263201500073B
- 3) YOU CAN FAX, EMAIL OR MAIL THE ABOVE REQUIRED INFORMATION TO:
  - Fax number: 877-867-8945
  - Email: Contracts.LED.Asheville@Thermofisher.com
  - Mail: Thermo Fisher Scientific (Asheville) LLC  
Attention Service Contract Administrator  
BLDG 2B, 28 SCHENCK PARKWAY, STE 400  
Asheville, NC 28803

When you receive your invoice send your payment to:  
Thermo Fisher Scientific (Asheville) LLC  
P.O. Box 842339 Dallas, Texas 75284-2339.  
Federal ID [REDACTED]

Acceptance and delivery of your order is subject to the terms and conditions on the face of this quote, which shall constitute the exclusive contract between us for your order.

**INSTRUMENT SERVICE AGREEMENT QUOTE**  
**Contract Quote ISR0044520**

Customer Contact	THANK YOU FOR CHOOSING THERMO FISHER SCIENTIFIC	Contract Sales Rep
Contact:Kurt Becker Phone: 512-972-5523 Fax: Email: Kurt.Becker@austintexas.gov	CONFIDENTIAL  ***** -PLEASE NOTE THAT THE PRICING SET FORTH IN THIS QUOTATION IS PROPRIETARY TO THERMO FISHER SCIENTIFIC AND AS SUCH IS CONFIDENTIAL AND SHOULD NOT BE DISCLOSED TO ANY OTHER VENDOR- *****	Thermo Fisher Scientific Asheville LLC Bldg 2B, Suite 400 28 Schenck Parkway Asheville, NC 28803 USA Contact:Patel, Sheila Phone: 1-828-365-1324 Fax: 877-867-8945 Email: sheila.patel@thermofisher.com

Work Site 547223.L01 CITY OF AUSTIN, FAR SOUTH CLINIC, 405 W STASSNEY  
 AUSTIN, TX, 78745, USA

KATHY CAVIN  
 kathy.cavin@austintexas.gov

512-972-5505

Contract #	Model	Your Serial#	Installation Date	Age (Yrs)	Package Type	Contract Start	Agreement End	Package Price	Pro-Rated(%)	Options Price	Total																
1000011185	REL2304A REVCO GEN	V24P-116835-WP	08-31-05	10	TC	07-07-16	07-06-17	935.00	0.00	0.00	935.00																
<table><tr><td colspan="2">Quantity</td><td colspan="2">Options</td><td colspan="2">Unit Price</td><td colspan="2">Total Price</td></tr><tr><td>1</td><td>Included</td><td>PM</td><td></td><td>410.00</td><td></td><td>0.00</td><td></td></tr></table>												Quantity		Options		Unit Price		Total Price		1	Included	PM		410.00		0.00	
Quantity		Options		Unit Price		Total Price																					
1	Included	PM		410.00		0.00																					
1000013616	FFPH2330A FORMA GE	T02T-135306-TT	06-06-08	8	TC	07-07-16	07-06-17	935.00	0.00	0.00	935.00																
<table><tr><td colspan="2">Quantity</td><td colspan="2">Options</td><td colspan="2">Unit Price</td><td colspan="2">Total Price</td></tr><tr><td>1</td><td>Included</td><td>PM</td><td></td><td>410.00</td><td></td><td>0.00</td><td></td></tr></table>												Quantity		Options		Unit Price		Total Price		1	Included	PM		410.00		0.00	
Quantity		Options		Unit Price		Total Price																					
1	Included	PM		410.00		0.00																					

Work Site 547223.L05 CITY OF AUSTON TX, SHOTS FOR TOTS DEPT, 7500 BLESSING AVENUE  
 AUSTIN, TX, 78752, USA

LETICIA AVILA  
 Leticia.Avila@austintexas.gov

512-972-5505

Contract #	Model	Your Serial#	Installation Date	Age (Yrs)	Package Type	Contract Start	Agreement End	Package Price	Pro-Rated(%)	Options Price	Total								
1000011185	FFPH2330A	FORMA GE	S29T-135253-TT	06-05-08	8	TC	07-07-16	07-06-17	935.00	0.00	0.00	935.00							
<table><tr><th>Quantity</th><th>Options</th><th>Unit Price</th><th>Total Price</th></tr><tr><td>1</td><td>Included PM</td><td>410.00</td><td>0.00</td></tr></table>												Quantity	Options	Unit Price	Total Price	1	Included PM	410.00	0.00
Quantity	Options	Unit Price	Total Price																
1	Included PM	410.00	0.00																

Work Site 547223.L06 CITY OF AUSTIN, VITAL RECORDS, 7201 LEVANDER LOOP  
 BUILDING B, AUSTIN, TX, 78702, USA

CHRIS CROOKHAM  
 Email: \_\_\_\_\_

512-972-5414

**INSTRUMENT SERVICE AGREEMENT QUOTE**  
**Contract Quote ISR0044520**

Contract #	Model	Your Serial#	Installation Date	Age (Yrs)	Package Type	Contract Start	Agreement End	Package Price	Pro-Rated(%)	Options Price	Total
1000011185	REL2304A REVCO GEN	O22S-127643-PS	02-27-07	9	TC	07-07-16	07-06-17	935.00	0.00	0.00	935.00
	Quantity		Options	Unit Price		Total Price					
	1	Included	PM	410.00		0.00					
1000011185	FFPH2330A FORMA GE	T20T-135653-TT	06-26-08	8	TC	07-07-16	07-06-17	935.00	0.00	0.00	935.00
	Quantity		Options	Unit Price		Total Price					
	1	Included	PM	410.00		0.00					
1000011185	FFPH2330A FORMA GE	T24T-135701-UT	07-08-08	8	TC	07-07-16	07-06-17	935.00	0.00	0.00	935.00
	Quantity		Options	Unit Price		Total Price					
	1	Included	PM	410.00		0.00					
1000011185	REL2304A REVCO GEN	P26V-146786-RV	04-06-10	6	TC	07-07-16	07-06-17	935.00	0.00	0.00	935.00
	Quantity		Options	Unit Price		Total Price					
	1	Included	PM	410.00		0.00					

Work Site 547223.L10 AUSTIN HEALTH & HUMAN SERVICES, 15 WALTER STREET  
 RBJ BUILDING, 3RD FLOOR, AUSTIN, TX, 78702, USA

NELDA GARCIA/CHRIS CROOKHAM  
 Email: \_\_\_\_\_ 512-972-4145

Contract #	Model	Your Serial#	Installation Date	Age (Yrs)	Package Type	Contract Start	Agreement End	Package Price	Pro-Rated(%)	Options Price	Total																
1000011185	FFPH2330A	FORMA GE	P18T-134113-PT	04-01-08	8	TC	07-07-16	07-06-17	935.00	0.00	0.00	935.00															
<table><tr><td colspan="2">Quantity</td><td colspan="2">Options</td><td colspan="2">Unit Price</td><td colspan="2">Total Price</td></tr><tr><td>1</td><td>Included</td><td>PM</td><td></td><td>410.00</td><td></td><td>0.00</td><td></td></tr></table>												Quantity		Options		Unit Price		Total Price		1	Included	PM		410.00		0.00	
Quantity		Options		Unit Price		Total Price																					
1	Included	PM		410.00		0.00																					
1000011185	FFPH2330A	FORMA GE	T23T-135675-UT	07-07-08	8	TC	07-07-16	07-06-17	935.00	0.00	0.00	935.00															
<table><tr><td colspan="2">Quantity</td><td colspan="2">Options</td><td colspan="2">Unit Price</td><td colspan="2">Total Price</td></tr><tr><td>1</td><td>Included</td><td>PM</td><td></td><td>410.00</td><td></td><td>0.00</td><td></td></tr></table>												Quantity		Options		Unit Price		Total Price		1	Included	PM		410.00		0.00	
Quantity		Options		Unit Price		Total Price																					
1	Included	PM		410.00		0.00																					
---	REL2304A	REVCO GEN	0112974001130921	10-01-13	2	TC	07-07-16	07-06-17	935.00	0.00	0.00	935.00															
<table><tr><td colspan="2">Quantity</td><td colspan="2">Options</td><td colspan="2">Unit Price</td><td colspan="2">Total Price</td></tr><tr><td>1</td><td>Included</td><td>PM</td><td></td><td>410.00</td><td></td><td>0.00</td><td></td></tr></table>												Quantity		Options		Unit Price		Total Price		1	Included	PM		410.00		0.00	
Quantity		Options		Unit Price		Total Price																					
1	Included	PM		410.00		0.00																					

Manufacturer's warranty ended 09/30/2015.  
 A billable pre-inspection visit of the system would normally be required prior to support plan acceptance. If the support plan is purchased Thermo Fisher



INSTRUMENT SERVICE AGREEMENT QUOTE  
Contract Quote ISR0044520

will utilize the annual preventative maintenance visit to cover labor and travel for the pre-inspection. Parts related to a repair of the system during the initial visit will be a billable expense above and beyond the coverage of the support plan.

Work Site 547223.L11 CITY OF AUSTIN TX, HEALTH DEPT, 1000 TOYATH STREET  
REFUGEE CLINIC, AUSTIN, TX, 78703, USA

ABBY REYES  
Abby.Reyes@austintexas.gov

512-972-6206

Contract #	Model	Your Serial#	Installation Date	Age (Yrs)	Package Type	Contract Start	Agreement End	Package Price	Pro-Rated(%)	Options Price	Total
1000011185	REL2304A REVCO GEN	O22S-127644-PS	02-27-07	9	TC	07-07-16	07-06-17	935.00	0.00	0.00	935.00
Quantity		Options	Unit Price		Total Price						
1		Included	PM		410.00		0.00				

Total Price (before applicable taxes): =====  
10,285.00

INSTRUMENT SERVICE AGREEMENT QUOTE  
Contract Quote ISR0044520

CONTRACT PACKAGE DETAILS

DO = DEPOT ONLY

Depot Only Service Agreement

The Depot Only Service Agreement is a practical choice for compact equipment used in non-urgent situations. All repairs use genuine OEM parts and performance tests are conducted to ensure that your equipment meets all factory specifications before it is returned to you. Customer responsible for shipping unit to Depot.

Key features include:

- \* Priority Depot repair
- \* All labor and parts covered at 100%
- \* Depot to customer shipping is included

Base Coverage Exclusions: Consumable items such as light bulbs, gaskets, O-rings, vacuum/rotor grease, grease, batteries, rotors, rotor buckets, TBA, filters, chart recorder pen's, paper. Non factory installed accessories, buy-in parts and engineering specials. Complete system replacement is not covered under contract.

SC = SCHEDULE CARE

The Schedule Care Plan provides thorough annual preventive maintenance at your site by certified service engineers. Our specialist will inspect, clean, check, adjust and run all appropriate tests to ensure that your lab equipment continues to meet the manufacturer's performance standards. While this plan does not cover the cost of repairs, it will assure you of priority service.

Key features include:

- \* Annual onsite preventive maintenance (labor and travel included)
- \* Priority scheduling for time and material onsite repair
- \* Priority scheduling for time and material depot repairs
- \* Phone and e-mail support
- \* 15% discount on parts, labor and travel when additional service is needed outside of the scheduled preventive maintenance visit (DISCOUNT for parts applies to Thermo Fisher Scientific Equipment, some parts may not be available)

Base Coverage Exclusions: Consumable items such as light bulbs, gaskets, O-rings, vacuum/rotor grease, grease, batteries, rotors, rotor buckets, TBA, filters, chart recorder pen's, paper. Non factory installed accessories, buy-in parts and engineering specials. Complete system replacement is not covered under contract.

TC = TOTAL CARE

The Total Care Plan is our most comprehensive support plan for lab equipment. It minimizes downtime through responsive onsite service through annual preventive maintenance by factory -certified service engineers. The Total Care Plan assures optimal performance of your equipment at a fixed annual cost that makes it easy to budget for equipment support expenses.

Key features include:

- \* Priority onsite repair
- \* Annual onsite preventive maintenance
- \* All labor, parts and travel time covered 100%
- \* Priority depot repair
- \* Unlimited priority phone and e-mail support

Base Coverage Exclusions: Consumable items such as light bulbs, gaskets, O-rings, vacuum/rotor grease, grease, batteries, rotors, rotor buckets, TBA, filters, chart recorder pen's, paper. Non factory installed accessories, buy-in parts and engineering specials. Complete system replacement is not covered under contract.

WR = WARRANTY PLUS

\*\*PLAN ONLY AVAILABLE AT TIME OF INITIAL EQUIPMENT ORDER\*\*

Extend your manufacturer warranty with the Warranty Plus Plan. With this plan you get an additional 12 months warranty and on-site preventive maintenance for your lab equipment. Plans must be purchased at time of initial equipment order.

Key features include:

- \* Priority onsite repair
- \* Annual onsite preventive maintenance
- \* All labor, parts and travel time covered 100%
- \* Priority depot repair
- \* Unlimited priority phone and e-mail support

Base Coverage Exclusions: Consumable items such as light bulbs, gaskets, O-rings, vacuum/rotor grease, grease, batteries, rotors, rotor buckets, TBA, filters, cart recorder pen's, paper. Non factory installed accessories, buy-in parts and engineering specials. Complete system replacement is not covered under contract.

INSTRUMENT SERVICE AGREEMENT QUOTE  
Contract Quote ISR0044520

DTC = DEPOT TOTAL CARE

The Total Care Plan is our most comprehensive support plan for lab equipment. It minimizes downtime through responsive depot service through annual preventive maintenance by factory -certified service engineers. The Total Care Plan assures optimal performance of your quipment at a fixed annual cost that makes it easy to budget for equipment support expenses.

Key features include:

- \* Priority depot repair
- \* Annual depot preventive maintenance
- \* All labor and parts covered 100%
- \* Priority depot repair
- \* Unlimited priority phone and e-mail support

Base Coverage Exclusions: Consumable items such as light bulbs, gaskets, O-rings, vacuum/rotor grease, grease, batteries, rotors, rotor buckets, TBA, filters, chart recorder pen's, paper. Non factory installed accessories, bui-in parts and engineering specials. Complete system replacement is not covered under contract.

DWR = DEPOT WARRANTY PLUS

\*\*PLAN ONLY AVAILABLE AT TIME OF INITIAL EQUIPMENT ORDER\*\*

Extend your manufacturer warranty with the Warranty Plus Plan. With this plan you get an additional 12 months warranty and depot preventive maintenance for your lab equipment. Plans must be purchased at time of initial equipment order.

Key features include:

- \* Priority depot repair
- \* Annual depot preventive maintenance
- \* All labor and parts covered 100%
- \* Unlimited priority phone and e-mail support

Base Coverage Exclusions: Consumable items such as light bulbs, gaskets, O-rings, vacuum/rotor grease, grease, batteries, rotors, rotor buckets, TBA, filters, chart recorder pen's, paper. Non factory installed accessories, buy-inparts and engineering specials. Complete system replacement is not covered nder contract.

INSTRUMENT SERVICE AGREEMENT QUOTE  
Contract Quote ISR0044520

This Quote is valid for up to 30 days from the contract start date shown above.

TERMS AND CONDITIONS OF SERVICE

Thermo Fisher Scientific (Asheville) LLC (hereinafter defined as "Thermo Fisher") agrees to perform and Customer agrees to pay for the servicing of equipment subject to the following terms and conditions. This order shall be deemed accepted upon the signature of customer's acceptance of the Thermo Fisher copy of this order or the commencement of Service by Thermo Fisher. Thermo Fisher objects to any additional or different terms contained in Customer's response.

1. Service Thermo Fisher will repair those instruments identified which are not operating and restore them to product specifications as determined by Thermo Fisher within the 48 contiguous United States and the District of Columbia, Monday through Friday (excluding Thermo Fisher holidays) during the hours of 8:00 a.m. to 5:00 p.m. local standard time ("Normal Hours"). For service calls requested outside of Normal Hours or weekends or nationally observed holidays, Thermo Fisher will bill Customer at Thermo Fisher's after hours service rate.

(a) No repairs or modifications have been made by anyone other than an authorized Thermo Fisher Service Representative.

(b) The instrument was installed within ninety (90) days of shipment from the manufacture's or dealer's location, whichever applicable, and was installed by an authorized Thermo Fisher Service Representative when required by Thermo Fisher.

(c) Any replacements by Thermo Fisher do not extend the original warranty period.

(d) During the applicable warranty period, Thermo Fisher will, subject to service terms and conditions and with reasonable promptness, at its cost repair those instrument malfunction which occur notwithstanding that the instrument is being operated in accordance with Thermo Fisher's instruction manual for such instrument. A service call shall be considered complete when Thermo Fisher demonstrates by an appropriate test procedure that the instrument is operating in accordance with its performance specifications. Thermo Fisher shall provide to the customer a copy of the Field Service Report detailing the work performed by Thermo Fisher's Field Service Representative. Thermo Fisher reserves the right to make any changes in the design or construction of this instrument at any time, without any obligation.

(e) Thermo Fisher warrants that instrument service rendered by Thermo Fisher to the customer hereunder shall be performed by Thermo Fisher in a workmanlike manner resulting in satisfactory instrument performance.

2. Payment

(a) Customer agrees to makes payment of the total charge as a single payment within thirty days of the invoice. All payment is net 30 (thirty) days.

(b) Charges are exclusive of all state, local, use, excise and other taxes. Any such tax shall be paid by the Customer unless the Customer furnishes a valid exemption certificate to Thermo Fisher.

3. Replacement Parts There shall be no charge to customer for parts provided by Thermo Fisher for warranty service repair other than supplies of consumables, customer maintenance items, printer paper, pens, specialized lamps and fuses. Thermo Fisher provides a three (3) month warranty with replacement parts.

4. Key Operator Customer shall designate a key operator who shall be made available to Thermo Fisher to describe instrument malfunctions to Thermo Fisher Representatives by telephone and who shall be qualified to perform simple adjustments and corrections a requested by Thermo Fisher's representatives. Failure to designate a key operator or to perform customer maintenance as specified in the instrument instruction manual, may result at Thermo Fisher's option in a service call invoiced by Thermo Fisher at its standard rates for service, travel or move, labor and parts.

5. Equipment Modification Thermo Fisher reserves the right to make any changes in the design or construction of Thermo Fisher's instruments without incurring any obligation to make any changes whatsoever in the instruments described in this agreement. User agrees to allow Thermo Fisher at Thermo Fisher's expense to make retrofits or design changes which improve instrument reliability but do not change instrument performance characteristics.

6. Limitations

(a) Exceptional Causes of Equipment

Malfunction. Repair of equipment malfunction for the following abnormal conditions is not covered by this Agreement and will be performed by Thermo Fisher at its current service rate for labor and parts:

i. Shipping damage incurred enroute to Customer's site or because of moving equipment. Thermo Fisher will promptly provide a cost estimate for repairs to the consignee for filing claims to carriers for shipping damage.

ii. Flood, lightning, earthquake, tornado, hurricane or fire, bombing, armed conflict, malicious mischief, sabotage or other natural or manmade disasters.

iii. Physical abuse, misuse, sprinkler damage, electrical surge or abnormal power variation.

iv. Repairs, maintenance, or modifications made by anyone other than Thermo Fisher trained personnel or without Thermo Fisher's supervision and/or approval.

v. Relocation and reinstallation of equipment are not covered under this Agreement; although upon request Thermo Fisher, will supervise the removing, crating, relocation and reinstallation of equipment at Thermo Fisher's current service rate.

(b) Maintenance or replacement of media (i.e., floppy disks, plotter supplies, etc.) whatever the reason for loss, failure or damage is not covered by this Agreement.

INSTRUMENT SERVICE AGREEMENT QUOTE  
Contract Quote ISR0044520

- (c) The servicing of non-Thermo Fisher material or equipment is not covered by this Agreement. This includes non-Thermo Fisher material or equipment purchased for Engineering Specials.
- (d) Beta-site support is not covered by this Agreement.
- (e) Service calls made to train operators, not equipment malfunction, are not covered by this Agreement.

7. Warranty. Subject to the conditions set forth in this Agreement, Thermo Fisher warrants that Service rendered by Thermo Fisher to the Customer hereunder shall be performed by Thermo Fisher in a workmanlike manner and thereafter, the instrument will perform in accordance with its published specifications for ninety (90) days from the date of Service. Thermo Fisher's sole obligation under this Agreement is to provide Service as described in Section 1, Service. THERMO FISHER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND DISCLAIMS ALL WARRANTIES INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY REPLACEMENTS BY THERMO FISHER DO NOT EXTEND THE ORIGINAL WARRANTY PERIOD.

8. Indemnification and Limitation of Liability. Thermo Fisher agrees to indemnify, defend and save Customer, its officers, directors, employees, agents and representatives harmless from all losses, expenses, demands and claims made against Customer, its officers, directors, employees, agents and representatives because of any personal injuries, death or property damage to the extent it is caused by the negligence or willful misconduct by Thermo Fisher, its employees, agents or representatives in connection with its performance of services.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING BUT NOT LIMITED TO, LOST PROFITS AND BUSINESS INTERRUPTION), REGARDLESS OF WHETHER EITHER PARTY; (A) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR (B) IS NEGLIGENT. IN NO EVENT WILL THERMO FISHER'S TOTAL LIABILITY EXCEED THE CHARGE PAID BY CUSTOMER FOR THE SERVICE.

9. Insurance Thermo Fisher maintains insurance policies which have the following minimum limits and coverage:

- (a) Comprehensive general liability insurance for a limit of \$1,000,000 (one million) for each occurrence and \$2,000,000 (two million) in the aggregate,
- (b) Statutory workers' compensation and employer's liability insurance. Copies of certificates of insurance evidencing the specified coverage are available upon request.

10. Customer Responsibilities

- (a) Customer shall provide Thermo Fisher personnel reasonable access the equipment whenever service is required. Customer shall cooperate with Thermo Fisher personnel so that service can be performed efficiently and without interruption.
- (b) Thermo Fisher shall be allowed use of Customer equipment which Thermo Fisher personnel deem necessary for performance of service.
- (c) Customer shall be responsible for the procurement, installation, and maintenance of all non-Thermo Fisher communication media including but not limited to telephone and communication equipment for the remote transmission of data. Charges for such equipment or media in connection with the performance of service under this Agreement shall be borne by Customer.

11. General

- (a) Thermo Fisher agrees not to knowingly disclose any information or data obtained pursuant to the performance of this Agreement when such information or data is clearly identified as proprietary.
- (b) Thermo Fisher reserves the right to determine the assignment of its employees in the performance of this Agreement.
- (c) Neither party shall assign this Agreement without prior consent of both parties.
- (d) This document constitutes the complete and exclusive agreement between Thermo Fisher and the Customer concerning the servicing of equipment and no addition to or modification of any provision of this Agreement shall be binding on Thermo Fisher unless made in writing and signed by a duly authorized representative of Thermo Fisher.
- (e) This Agreement shall be governed by the internal laws of the State of Thermo Fisher's location in the United States. Customer consents to venue and jurisdiction over any action related to this Agreement in the county and state of Thermo Fisher's location.

Any provision(s) of this Agreement which in any way contravenes the law of any state or country in which this Agreement is effective shall to the extent of such contravention of law, be deemed separable and shall not affect any other provision or the validity of this Agreement.

As an authorized representative of the Buyer, your signature below creates an Agreement to buy the services listed above and your acceptance of the Terms and Conditions on the foregoing pages as the sole and exclusive terms for your purchase. (Rev 11-07-13)

\_\_\_\_\_  
Authorized Customer Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Purchase Order Number or Check Number (Please attach document)

\_\_\_\_\_  
Thermo Fisher Service Sales Specialist

\_\_\_\_\_  
Date



January 29, 2013

Mr. Kurt Becker  
City of Austin  
14050 Summit Drive, Suite 121  
Austin, TX 78728

Dear Mr. Becker:

This letter is to inform your facility that Thermo Fisher Scientific, with corporate offices located in Waltham, MA, is the sole manufacturer of Revco® General Purpose Refrigerators and Forma® General Purpose Refrigerators and each one's associated parts. Service for these products is provided by our certified Field Service Engineers and authorized service providers. Thermo Fisher Scientific (Asheville) LLC Field Service Engineers and authorized service providers are the only service providers authorized to repair instruments quoted by Thermo Fisher Scientific (Asheville) LLC Service Contracts and covered by Thermo Fisher Scientific (Asheville) LLC Service Agreements. Should any unauthorized service provider not certified by Thermo Fisher Scientific (Asheville) LLC perform a repair on a Revco® General Purpose Refrigerator or Forma® General Purpose Refrigerator, the manufacturer's warranty or extended warranty will be void.

Please contact your Inside Sales Representative at 800-438-4851 should you require further information or assistance.

Sincerely,



Angela Farnquist  
Contract Specialist  
Thermo Fisher Scientific (Asheville) LLC  
Building 2B  
28 Schenck Parkway, Suite 400  
Asheville, NC 28803

**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all Deliverables described in the Solicitation 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. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES**: The Contractor will package Deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the Deliverables under reservation and no tender of a bill of lading will operate as a tender of Deliverables.
5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the Deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **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

**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

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.

**10. WORKFORCE**

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. 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 .
  - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
  - ii. 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.
- C. 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.

- 11. 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.

**12. INVOICES:**

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include 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 and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and Deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. 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.

**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

**13. PAYMENT:**

- A. 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.
- B. **If payment is not timely made, (per paragraph A), 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.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
  - i. delivery of defective or non-conforming Deliverables by the Contractor;
  - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
  - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
  - iv. 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;
  - v. 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;
  - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
  - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. 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.
- F. 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 funds transfer.
- G. 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.

- 14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

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No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

**15. FINAL PAYMENT AND CLOSE-OUT:**

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
  - i. 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
  - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

**16. SPECIAL TOOLS & TEST EQUIPMENT:** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

**17. RIGHT TO AUDIT:**

- A. 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.
- B. The Contractor shall include section a. above in all subcontractor agreements entered into in connection with this Contract.

**18. SUBCONTRACTORS:**

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.



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- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
- i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
  - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
  - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
  - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
  - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

**19. WARRANTY-PRICE:**

- A. 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.
- B. 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.
- C. 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.

**20. WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.

**21. WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.

- A. Recycled Deliverables shall be clearly identified as such.

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- B. 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.
  - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively 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.
  - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables 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 Deliverables from another source.
  - E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. 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.
  - B. 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 above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
  - C. 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.
23. **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.
24. **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

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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.

25. **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.
26. **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 Paragraph 24, (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 the Contractor to the City.
27. **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.
28. **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.
29. **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.
30. **DELAYS:**
- A. 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 in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. 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

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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.

**31. INDEMNITY:**

**A. Definitions:**

- i. "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:
  - (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
  - (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),
- ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

**B. 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.**

**32. INSURANCE: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).**

**A. General Requirements.**

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. 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 hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the 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.
- iv. 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.

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- v. 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.
- vi. 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.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, 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.
- viii. 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.
- ix. 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.
- x. 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.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall 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.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

**B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions**

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform 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.
34. **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 Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the

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City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.

35. **RIGHTS TO BID, 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.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
37. **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 Agreement, 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.
38. **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.
39. **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.
40. **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.

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41. **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 of Austin 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.
42. **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.
43. **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.
44. **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.
45. **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.
46. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **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.
48. **DISPUTE RESOLUTION:**
- A. 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

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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.

- B. 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.
49. **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.
50. **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.
51. **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.



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52. **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.

53. **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.

54. **EQUAL OPPORTUNITY**

- A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. 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.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

55. **INTERESTED PARTIES DISCLOSURE**

As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

56. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)**

- A. Definitions. As used in this paragraph –
- i. "Component" means an article, material, or supply incorporated directly into an end product.
  - ii. "Cost of components" means -
    - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

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- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
- iii. "Domestic end product" means-
  - (1) An unmanufactured end product mined or produced in the United States; or
  - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
- iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
- v. "Foreign end product" means an end product other than a domestic end product.
- vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

**ADDENDUM TO**  
**CUSTOMER'S PURCHASE ORDER TERMS AND CONDITIONS**  
**BETWEEN**  
**Thermo Fisher Scientific (Asheville) LLC ("Thermo Fisher")**  
**AND**  
**City of Austin ("Customer")**  
**for NS160000066 (Referencing Quote ISR0044520)**

Notwithstanding anything contained in the above-referenced Purchase Order for Services and the Customer's Terms & Conditions ("T&Cs") to the contrary, the terms and conditions of this Addendum shall govern the rights and obligations of the parties hereto and in the event of a conflict between the provisions of this Addendum and the Purchase Order and T&Cs, the provisions of this Addendum shall prevail.

The term of this agreement will be for a period of twelve (12) months from the execution date of the agreement, unless terminated earlier by either party by providing thirty (30) days prior written notice. Termination or expiration of this agreement shall not relieve Customer of any obligations incurred prior to the effective date of termination.

**Payment Terms**      Net 30 from date of invoice.

**Service**

Thermo Fisher will repair those instruments identified which are not operating and restore them to product specifications as determined by Thermo Fisher within the 48 contiguous United States and the District of Columbia, Monday through Friday (excluding Thermo Fisher holidays) during the hours of 8:00 a.m. to 5:00 p.m. local standard time ("Normal Hours"). For service calls requested outside of Normal Hours or weekends or nationally observed holidays, Thermo Fisher will bill Customer at Thermo Fisher's after hours service rate.

(a) No repairs or modifications have been made by anyone other than an authorized Thermo Fisher Service Representative.

(b) The instrument was installed within ninety (90) days of shipment from the manufacture's or dealer's location, whichever applicable, and was installed by an authorized Thermo Fisher Service Representative when required by Thermo Fisher.

(c) Any replacements by Thermo Fisher do not extend the original warranty period.

(d) During the applicable warranty period, Thermo Fisher will, subject to service terms and conditions and with reasonable promptness, at its cost repair those instrument malfunction which occur notwithstanding that the instrument is being operated in accordance with Thermo Fisher's instruction manual for such instrument. A service call shall be considered complete when Thermo Fisher demonstrates by an appropriate test procedure that the instrument is operating in accordance with its performance specifications. Thermo Fisher shall provide to the customer a copy of the Field Service Report detailing the work performed by Thermo Fisher's Field Service Representative. Thermo Fisher reserves the right to make any changes in the design or construction of this instrument at any time, without any obligation.

(e) Thermo Fisher warrants that instrument service rendered by Thermo Fisher to the customer hereunder shall be performed by Thermo Fisher in a workmanlike manner resulting in satisfactory instrument performance.

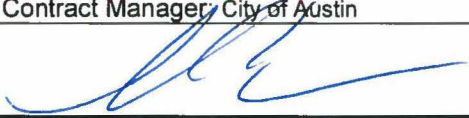

**Service Warranty**

Subject to the conditions set forth in this Agreement, Thermo Fisher warrants that Service rendered by Thermo Fisher to the Customer hereunder shall be performed by Thermo Fisher in a workmanlike manner and thereafter, the instrument will perform in accordance with its published specifications for ninety (90) days from date of Service. Thermo Fisher's sole obligation under this Agreement is to provide Service as described in Section 1, Service. THERMO FISHER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND DISCLAIMS ALL WARRANTIES INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY REPLACEMENTS BY THERMO FISHER DO NOT EXTEND THE ORIGINAL WARRANTY PERIOD.

**Indemnification and Limitation of Liability.** Contractor agrees to indemnify, defend and save City, its officers, directors, employees, agents and representatives harmless from all losses, expenses, demands and claims made against City, its officers, directors, employees, agents or representatives because of any personal injury, death or property damage to the extent caused by the negligence or willful misconduct of Contractor, its employees, agents or representatives in connection with the performance of Contractor's obligations under this Contract; provided, however, that in no event shall Contractor be liable for any indirect, special, consequential or incidental damages, regardless of whether Contractor (a) has been informed of the possibility of such damages or (b) is negligent. The City shall provide prompt written notice of any third party claim covered hereunder to the Contractor. The Contractor shall have the right to assume exclusive control of the defense of such claim or to settle the same with City's approval if City is a named party. The City agrees to cooperate reasonably with the Indemnifying Party in connection with the performance by the Contractor of its obligations under this paragraph. Notwithstanding the above, Contractor's liability for indemnification and damages, in the aggregate, shall be limited to an amount up to one million dollars (\$1,000,000).

**INSURANCE**

Seller will maintain and carry liability insurance which includes but is not limited to employer's liability, workmen's compensation, general liability, public liability, property damage liability, product liability, completed operations liability and contractual liability in amounts set forth below with insurance companies rated A or better by "A.M. BEST" rating services. Insurance includes (a) Commercial General Liability (CGL) insurance for a limit of \$2,000,000 (two million) for each occurrence and \$4,000,000 (four million) in the aggregate, (b) Statutory workers' compensation and employer's liability insurance for a limit of \$1,000,000 (one million), (c) Automobile liability of \$2,000,000 (two million) and (d) Excess/Umbrella \$2,000,000 (two million). Seller's CGL and Automobile Liability policies will name the Buyer as an additional insured to the extent of Seller's negligence. Seller waives right of subrogation as it pertains to its obligations as per written contract for the term of the contract, however, in no event shall the waiver extend to the negligence of the Buyer. Insurance coverage shall not be materially changed without thirty-(30) day advance notification to Buyer from carrier and if requested by Buyer, certificates of insurance shall be furnished from its carrier evidencing the foregoing coverage. Such evidence of insurance shall be provided by using the standard ACORD form.

Contract Manager: City of Austin	SELLER: Thermo Fisher Scientific (Asheville) LLC
	
Signature	Signature
MARTI JAMES	Jessica Carver McIntosh
Print Name:	Print Name:
BUYER II	Contract Specialist
Title:	Title:
09-26-2016	9/26/2016
Date:	Date: