



Amendment No. 5
to
Contract No. NS160000050
for
Preventative Maintenance of Spectrophotometer
between
Thermo Electron North American, LLC
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be May 12, 2020 through May 11, 2021. Zero (0) options will remain.
- 2.0 The total contract amount is increased by \$4,132.20 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 09/15/2016 – 09/14/2017	\$4,011.92	\$4,011.92
Amendment No. 1: Adjust Dates of Initial Contract Term 09/30/2016	\$0.00	\$4,011.92
Amendment No. 2: Option 1 – Extension 05/12/2017 – 05/11/2018	\$4,011.92	\$8,023.84
Amendment No. 3: Option 2 – Extension 05/12/2018 – 05/11/2019	\$4,011.92	\$12,035.76
Amendment No. 4: Option 3 – Extension 05/12/2019 – 05/11/2020	\$4,011.92	\$16,047.68
Amendment No. 5: Option 4 – Extension 05/12/2019 – 05/11/2020	\$4,132.30	\$20,179.98

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment, the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the 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.

Sign/Date: Sarah Danish 12/27/19

Sign/Date: [Signature] 12/27/19

Printed Name: Sarah Danish
Authorized Representative

Brenita Selement
Procurement Specialist II
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701

Thermo Electron North American, LLC
1400 Northpoint Parkway, Suite 10
West Palm Beach, Florida 33407
(608) 276-6275
douglas.olson@thermofisher.com



Amendment No. 4
to
Contract No. NS160000050
for
Preventative Maintenance of Spectrophotometer
between
Thermo Electron North American, LLC
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be May 12, 2019 through May 11, 2020. One option will remain.
- 2.0 The total contract amount is increased by \$4,011.92 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 09/15/2016 – 09/14/2017	\$4,011.92	\$4,011.92
Amendment No. 1: Adjust Dates of Initial Contract Term 09/30/2016	\$0.00	\$4,011.92
Amendment No. 2: Option 1 – Extension 05/12/2017 – 05/11/2018	\$4,011.92	\$8,023.84
Amendment No. 3: Option 2 – Extension 05/12/2018 – 05/11/2019	\$4,011.92	\$12,035.76
Amendment No. 4: Option 3 – Extension 05/12/2019 – 05/11/2020	\$4,011.92	\$16,047.68

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment, the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the 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.

Sign/Date: Resa Ferguson 04/19/19

Printed Name: Resa Ferguson, Contract Administrator
Authorized Representative

Thermo Electron North American, LLC
1400 Northpoint Parkway, Suite 10
West Palm Beach, Florida 33407
(608) 276-6275
douglas_olson@thermofisher.com

Sign/Date: Cindy Reyes April 29, 2019

Cindy Reyes
Contract Management Specialist III
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 3
to
Contract No. NS160000050
for
Preventative Maintenance of Spectrophotometer
between
Thermo Electron North American, LLC
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be May 12, 2018 through May 11, 2019. Two options will remain.
- 2.0 The total contract amount is increased by \$4,011.92 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 09/15/2016 – 09/14/2017	\$4,011.92	\$4,011.92
Amendment No. 1: Adjust Dates of Initial Contract Term 09/30/2016	\$0.00	\$4,011.92
Amendment No. 2: Option 1 – Extension 05/12/2017 – 05/11/2018	\$4,011.92	\$8,023.84
Amendment No. 3: Option 2 – Extension 05/12/2018 – 05/11/2019	\$4,011.92	\$12,035.76

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the 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.

Sign/Date: Megan Van Horn

Printed Name: Megan Van Horn
Authorized Representative

Thermo Electron North American, LLC
1400 Northpoint Parkway, Suite 10
West Palm Beach, Florida 33407
(608) 276-6275
douglas.olson@thermofisher.com

Sign/Date: Cindy Reyes

Cindy Reyes
Contract Management Specialist III
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 2
to
Contract No. NS160000050
for
Preventative Maintenance of Spectrophotometer
between
Thermo Electron North American, LLC
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be May 12, 2017 through May 11, 2018. Three options will remain.
- 2.0 The total contract amount is increased by \$4,011.92 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 09/15/2016 – 09/14/2017	\$4,011.92	\$4,011.92
Amendment No. 1: Adjust Dates of Initial Contract Term 09/30/2016	\$0.00	\$4,011.92
Amendment No. 2: Option 1 – Extension 05/12/2017 – 05/11/2018	\$4,011.92	\$8,023.84

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the 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.

Sign/Date: Joanne Eisenzimmer

Digitally signed by Joanne Eisenzimmer
DN: cn=Joanne Eisenzimmer, o=Thermo Electron North
America LLC, ou,
email=joanne.eisenzimmer@thermofisher.com, c=US
Date: 2017.05.04 11:25:00 -0500

Printed Name: Joanne Eisenzimmer
Authorized Representative

Thermo Electron North American, LLC
1400 Northpoint Parkway, Suite 10
West Palm Beach, Florida 33407
(608) 276-6275
douglas.olson@thermofisher.com

Sign/Date:  5.4.2017

Mike Zambrano, Jr.
Contract Management Specialist III
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



**Amendment No. 1
to
Contract No. NS160000050
for
Preventive Maintenance of Spectrophotometer
between
Thermo Fisher Scientific - Thermo Electron North America LLC
and the
City of Austin**

- 1.0 The City hereby amends the above referenced contract to adjust the dates of the initial contract term from 09/15/2016 – 09/14/2017 to 05/12/2016 to 05/11/2017. Extension option dates will be adjusted accordingly.
- 2.0 The total Contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 09/15/2016- 09/14/2017	\$4,011.92	\$4,011.92
Amendment No. 1: Adjust Dates of Initial Contract Term 09/30/2016	\$0.00	\$4,011.92

- 3.0 MBE/WBE goals do not apply to 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 and made a part of the above referenced contract.

Signature & Date:

Carla Richardson 10-4-16

Printed Name: Carla Richardson
Contract Administrator
Authorized Representative

Thermo Fisher Scientific - Thermo Electron North
America LLC
1400 Northpoint Parkway
Suite 10
West Palm Beach, FL 33407

Signature & Date:

Roger Stricklin 10-4-16

Roger Stricklin
Corporate Contract Administrator

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

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Thermo Fisher Scientific - Thermo Electron North America LLC
For
Preventive Maintenance of Spectrometer
MA NS160000050**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Thermo Electron North America LLC ("Contractor"), having offices at 1400 Northpoint Parkway, Suite 10, West Palm Beach, FL 33407.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

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

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

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

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Steven Weber, Phone: (800) 532-4752 ext. 3216258, Email Address: steven.weber@thermofisher.com. The City's Contract Manager for the engagement shall be Alberto Banda, Phone: (512) 974-5273, Email Address: Alberto.Banda@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

The City of Austin, on behalf of the Austin Police Department (APD), is engaging with the Contractor for the provision of repairs and preventive maintenance for one Evolution 300 UV-Vis Spectrophotometer, Serial Number #EVOS128001, in accordance with Exhibit A to this Contract. This system allows APD to process and analyze evidence of crimes.

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

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

- 2.2.1 Provide unlimited repair services at APD's designated site(s) using trained service technicians
- 2.2.2 Respond to APD's requests for repair service within 72 hours of receipt of notice from APD
- 2.2.3 Perform annual inspection of the system for functionality at APD's designated site(s)
- 2.2.4 Include full coverage within the Contract amount of costs for labor, travel and a kit of basic

consumables

2.2.5 Priority status for technical support needs

2.2.6 Use of factory-certified replacement parts

2.2.7 Ten percent (10%) discount on training

2.2.8 Software updates and notifications

2.2.9 Correction or removal and replacement of defective or non-conforming deliverables

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$20,304.06 for all fees and expenses, to be paid in annual amounts as follows per Exhibit A to this Contract: \$4,011.92 for the initial term, \$4,011.92 for the first extension option, \$4,011.92 for the second extension option, \$4,011.92 for the third extension option and \$4,132.30 for the fourth extension option.

3.2 **Invoices.**

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

	City of Austin
Department	Austin Police Department
Attn:	Accounts Payable
Address	P. O. Box 1629
City, State, Zip Code	Austin, TX 78767-1629

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

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

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

3.3 **Payment.**

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

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

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

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

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

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

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

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

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

3.5.1 The making and acceptance of final payment will constitute:

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

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

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of twelve (12) months and may be extended thereafter for up to four (4) additional twelve (12) month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

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

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

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place

Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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

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

SECTION 5. OTHER DELIVERABLES

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

5.1.1 General Requirements.

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

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

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

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

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

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

5.1.1.7 All endorsements naming the City as additional insured to the extent required by written contract, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin
Purchasing Office
P. O. Box 1088

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

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

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

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

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

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

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

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

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

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

5.1.2.1.2 Contractor/Subcontracted Work.

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

5.1.2.1.4 Waiver of Subrogation to the extent required by written contract, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured to the extent required by written contract, Endorsement CG 2010, or equivalent coverage.

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

5.1.2.2.1 Waiver of Subrogation to the extent required by written contract, Endorsement CA0444, or equivalent coverage.

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

5.1.2.2.3 The City of Austin listed as an additional insured to the extent required by written contract, Endorsement CA2048, or equivalent coverage.

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

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

5.1.2.3.2 Waiver of Subrogation to the extent required by written contract, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days' Notice of Cancellation, Form WC420601, or equivalent coverage.

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

5.2 **Equal Opportunity.**

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

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

5.3 **Delays.**

5.3.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

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

5.4 **Ownership And Use Of Deliverables.** Contractor retains all rights in, title to and ownership of (i) any and all software provided to City under this Agreement, which is licensed, not sold, to City, solely for the purposes of City's use and operation of the Products; and (ii) all services deliverables provided by Contractor under this Agreement, whether related to Products or otherwise.

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

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

SECTION 6. WARRANTIES

6.1 **Warranty – Services.** Contractor's sole obligation with respect to the Services is to provide the quoted Services in a workmanlike manner and if City provides notice of defect in Service within ninety (90) days of completion of such Services, Contractor will, at its sole option, either reperform the Services without charge to City or grant City a credit for the amount paid by City with respect to such Service. .

6.1.1 EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR NONINFRINGEMENT. CONTRACTOR DOES NOT WARRANT THAT THE PRODUCTS OR SERVICES ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 **Workforce.**

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

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

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

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

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

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

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

7.4.1 disposal of major assets;

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

7.4.3 any significant termination or addition of provider contracts;

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

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

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

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

7.5 **Right To Audit.**

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

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

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

7.7 **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).

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

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

To the City:	To the Contractor:
City of Austin, Purchasing Office	Thermo Fisher Scientific
ATTN: Roger Stricklin, Corporate Contract Administrator	ATTN: Steven Weber, Service Sales Specialist
P O Box 1088	5225 Verona Road, Building 4
Austin, TX 78767	Madison, WI 53711

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

circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

7.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

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

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

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

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

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

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

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

7.20 Dispute Resolution.

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

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

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

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

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

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

7.22 Subcontractors.

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

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

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

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

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

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

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

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

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

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

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

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

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4

Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

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

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

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

7.28 **Incorporation of Documents. Section 0100, Standard Purchase Definitions,** is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:
https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

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

7.29.1 this Contract;

7.29.2 the attached Exhibits.

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

THERMO FISHER SCIENTIFIC-THERMO
ELECTRON NORTH AMERICA LLC

By: Joanne Eisenzimmer
Signature

Name: Joanne Eisenzimmer
Printed Name

Title: Contracts Manager

Date: 9/12/16

CITY OF AUSTIN

By: Roger Strickland
Signature

Name: Roger Strickland
Printed Name

Title: Corporate Contract Administrator

Date: 9-15-16

List of Exhibits

Exhibit A	Contractor's Support Plan and Quote
Exhibit B	Non Discrimination Certification, Section 0800

EXHIBIT A
CONTRACTOR'S SUPPORT PLAN AND QUOTE

Thermo Electron North America LLC

1400 Northpoint Pkwy Ste 50
West Palm Beach, FL 33407-1976

SUPPORT PLAN QUOTATION	
QUOTATION Number:	20680497 / -4
Coverage Start Date:	May 12, 2016
Coverage End Date:	May 11, 2017
Quotation Expires:	May 12, 2016

CHRIS KIYAK
AUSTIN PD FORENSIC SCIENCE DIVISION
812 SPRINGDALE ROAD
AUSTIN TX 78727

Phone: 512-974-5104

Fax:

Email: CHRISTOPHER.KIYAK@AUSTINTEXAS.GO

V

Dear CHRIS KIYAK,

Thank you for purchasing a Support Plan for your Thermo Scientific instrumentation. When you purchased your Thermo Scientific product, you gained a partner that is committed to your long term success. We understand the challenges you face today: increasing productivity and reducing costs, while achieving better results in less time.

According to our records, the Support Plan coverage for your Thermo Scientific product is nearing expiration. We have attached a quotation to continue your Support Plan coverage that will help you gain the greatest value from your technology investment by maintaining top performance from your instruments, maximizing uptime and productivity, and eliminating the uncontrollable cost of unplanned maintenance and repairs. We ask that you please review the attached quotation.

If you wish to accept this quotation, please sign the attached copy and return it, with your fax or hard copy Purchase Order to: Thermo Electron North America LLC, 5225 Verona Road, Madison, WI 53711 or fax to 877-867-8945.

We have included a document that summarizes the information in our database relating to your instrument. Please review this summary for accuracy. To update your information we ask that you simply fax the changes to the number provided on the summary. This will help us provide quick and accurate delivery, whether you need parts, technical support or service.

Thank you for your continued patronage. If you have any questions or concerns, please do not hesitate to contact us at 1-800-532-4752. Please use the document number shown at the top of this letter to reference this quotation or your instrument serial number listed in the quotation.

Sincerely,

STEVE WEBER

EXHIBIT A
CONTRACTOR'S SUPPORT PLAN AND QUOTE

Thermo Electron North America LLC

1400 Northpoint Pkwy Ste 50
West Palm Beach, FL 33407-1976

SUPPORT PLAN QUOTATION

QUOTATION Number:	20680497 / -4
Coverage Start Date:	May 12, 2016
Coverage End Date:	May 11, 2017
Quotation Expires:	May 12, 2016

CHRIS KIYAK
AUSTIN PD FORENSIC SCIENCE DIVISION
812 SPRINGDALE ROAD
AUSTIN TX 78727

Phone: 512-974-5104

Fax:

Email: CHRISTOPHER.KIYAK@AUSTINTEXAS.GO

V

Customer agrees to make full payment within thirty days of invoice. Alternative payments are available at an additional finance fee. Prices shown on this sheet are exclusive of all state, local, use, excise and/or other taxes.

Material	Description	Serial Number	Price
10300201	Evolution 300 PC Control VISIONPRO Coverage: UNITY ESSENTIAL PLAN - SPECTRONIC	EVOS128001	4,136.00 USD

UNITY ESSENTIAL SUPPORT PLAN SPECTRONIC

Essential Support Plan Features:

- ~ Unlimited number of demand on-site service visits with a maximum 72-hour response
- ~ Engineer labor and travel is included
- ~ Priority status for technical support inquiries
- ~ One (1) scheduled Preventative Maintenance visit
- ~ Kit of basic consumables required for routine Preventive Maintenance
- ~ Factory-certified replacement parts included
- ~ 10% discount on Institute based or on-site Trainings purchased during the contract validity period. Application or method development courses are excluded.
- ~ Software updates and notifications. Updates are defined as Software revisions that provide minor changes that are needed to correct or improve the previous version of the software. Software updates are normally indicated by a software revision number change e.g. version 1.1 to version 1.2.
- ~ Computers purchased from Thermo and are required for the operation of the system is covered under a Support Plan. Replacement of Computers that require an Upgrade to new operating systems are not included in a Support Plan.
- ~ One time 10% discount on Parts, Accessories or Consumables for end user during active contract. Contact our parts group at Unity Priority line 1-877-594-3224 and mention the Loyalty PACs program.

Base Coverage Exclusions:

- ~ Computers not provided and installed with the system by Thermo Fisher. Hardware and Operating System upgrades, replacing a HD with larger capacity.
- ~ Software version upgrades are not provided under a Support Plan. Upgrades are normally indicated by a software version number change e.g. version 1.2 to version 2.0.
- ~ Buy-in parts and engineering specials.
- ~ Consumable items such as UV and Xenon lamps, cassettes, diskettes, external cables, gaskets, grease, ink, o-rings, ribbons, tubing & connectors, cuvettes, glassware, special cell holders, Peltier systems, water baths, any other accessories and paper.
- ~ Unless covered by a specific contract option, third party accessories, GC ovens, autosamplers, mapping stages, all Raman lasers, 960 Raman lasers iS50 ATR Module, iS50 Beamsplitter Exchanger and sampling accessories (including Spectra-tech and Smart Accessories) and Tablets.
- ~ Complete system replacement is not covered under contract.

OPTION YEAR 1: 5/12/2017 THRU 5/11/2018 = \$4,011.92

OPTION YEAR 2: 5/12/2018 THRU 5/11/2019 = \$4,011.92

OPTION YEAR 3: 5/12/2019 THRU 5/11/2020 = \$4,011.92

OPTION YEAR 3: 5/12/2020 THRU 5/11/2021 = \$4,132.30

Support Plan Sub-Total	4,136.00	USD
Discount: 3.00%	-124.08	USD
Support Plan Total	4,011.92	USD

EXHIBIT A
CONTRACTOR'S SUPPORT PLAN AND QUOTE

Thermo Electron North America LLC

1400 Northpoint Pkwy Ste 50
West Palm Beach, FL 33407-1976

SUPPORT PLAN QUOTATION	
QUOTATION Number:	20680497 / -4
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CHRIS KIYAK
AUSTIN PD FORENSIC SCIENCE DIVISION
812 SPRINGDALE ROAD
AUSTIN TX 78727

Phone: 512-974-5104

Fax:

Thermo Fisher Scientific looks forward to providing service on those instruments specified above subject to the terms and conditions stated on the attached document. 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 following pages as the sole and exclusive terms for your purchase. If you have questions, please call 800-532-4752 to contact your support plan specialist STEVE WEBER.

ACCEPTANCE OF SUPPORT PLAN

AUSTIN PD FORENSIC SCIENCE DIVISION

Thermo Electron North America, LLC

Signature

Date

Signature

Date

Support Plan Specialist

PO Number

EXHIBIT A
CONTRACTOR'S SUPPORT PLAN AND QUOTE

Thermo Electron North America LLC
1400 Northpoint Pkwy Ste 50
West Palm Beach, FL 33407-1976

Support Plan Terms and Conditions

Thermo Electron North America, 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 issuance of a purchase order by Customer that references this offer or the commencement of Service by Thermo Fisher. This Service Agreement ("Agreement") is expressly conditioned upon the acceptance by Customer of the terms and conditions hereof and Thermo Fisher expressly objects to any additional or different terms contained in Customer's response. This offer expires at five o'clock PM Eastern Time (5:00 PM ET) on the quote expiration date of the cover page hereto.

1. Service:

Thermo Fisher will maintain and/or repair ("Service(s)") those instruments identified on the cover sheet ("Equipment") to ensure they operate within the manufacturer's standard 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") during the term of the Agreement. The Equipment must be operated according to the manufacturer's supplied Operator's Manual(s) and any malfunction must be reported promptly to Thermo Fisher. Service calls requested outside of Normal Hours and Service of any items not identified on the cover sheet hereof will be billed at Thermo Fisher's standard rates for service, travel or move, labor and parts in effect at the time of the request. Thermo Fisher may provide various levels of Service at the Customer site(s) and/or Depot repair locations, which shall be provided in accordance with the details on the cover sheet of this Agreement.

2. Term and Termination:

- (a) This Agreement shall begin and remain effective for the period of time stated on the cover page ("Term"). To renew this Agreement, Customer must sign a Renewal Service Agreement accompanied by a purchase order prior to the expiration of the current Term ("Renewal").
- (b) Both parties have the right to cancel this Agreement without cause by providing written notice sixty (60) days in advance to the other party. Customer shall pay for all amounts due and payable prior to termination of the Agreement. Thermo Fisher will reimburse Customer on a pro rata basis up through the termination effective date for any payments made by Customer in advance.
- (c) Thermo Fisher reserves the right to withhold Service purchased under this Agreement, if Customer fails to make payments as due. Should nonpayment extend beyond thirty (30) days after receipt of written notice, Thermo Fisher may terminate this Agreement. Customer shall nevertheless pay for all amounts due and payable prior to suspension of Service or termination of the Agreement.

3. Pricing and Payment:

- (a) Customer agrees to make a single payment at the start of the Term of this Agreement in U.S. or Canadian currency equal to the total Service charge for the initial Term or, if applicable, payments in accordance with a mutually agreed payment schedule, as stated on the cover page hereof. All payments shall be net thirty (30) days of the date of the invoice.
- (b) Charges are exclusive of all state, local, use, excise and other taxes, which shall be paid by the Customer, unless the Customer furnishes a valid exemption certificate to Thermo Fisher.
- (c) The annual charge to renew this Agreement for a subsequent Term shall be Thermo Fisher's standard service agreement rate in effect at the start of each Renewal. Thermo Fisher agrees to waive its right to bill the Customer for bringing the Equipment into good operating condition if there is no lapse between the end date of this Agreement and the beginning of the Renewal. Pricing of Services is based on the assumption that the Equipment operates in accordance with product specifications at the start of the Term; therefore, prior to the start of each Renewal, Thermo Fisher reserves the right to verify the Equipment condition and invoice Customer at its standard rates for service, travel or move, labor and parts.

4. Parts and Consumables:

The service level defines when and if the cost of parts is included under the Agreement. Notwithstanding the foregoing, the cost for parts that are consumed in the normal and usual operation of the Equipment including, but are not limited to, sample prep & analysis consumables, paper, ink cartridges, ribbons, pens, lamps and/or data media shall not be included under the Agreement.

5. Key Operator:

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

6. 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 Equipment described in this Agreement. Customer 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. Any Customer requests to modify or add non-Thermo Fisher approved devices or accessories to Equipment are outside the scope of this Agreement.

7. Warranty:

Thermo Fisher's sole obligation under this Agreement is to provide Service as described in Section 1 hereof. 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 AND ANY OTHER OBLIGATIONS OR LIABILITIES WHETHER IN CONTRACT, WARRANTY, NEGLIGENCE OR OTHERWISE.

8. Limitations and Exclusions:

(a) Repair of Equipment malfunction for the following abnormal conditions is not covered by this Agreement and if performed by Thermo Fisher will be invoiced to Customer at Thermo Fisher's standard rates for service, travel or move, 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, terrorism, 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 standard rates for service, travel or move, labor and parts.
- (b) The maintenance or replacement of media (i.e., floppy disks, printer supplies, etc.) whatever the reason for loss, failure or damage is not covered by this Agreement.
- (c) The servicing of non-Thermo Fisher material or instruments is not covered by this Agreement, including non-Thermo Fisher material or instruments 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.
- (f) Service calls made as a result of Customer-identified areas of responsibility, i.e. malfunctions related to site facilitization (power, water, temperature, humidity, vibration, dust, etc.) or site computer/data network problems or integrity.

(g) THERMO FISHER SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS AND BUSINESS INTERRUPTION ARISING OUT OF THE USE OR INABILITY TO USE ANY PARTS, EQUIPMENT OR SERVICES SOLD HEREUNDER, regardless of whether Thermo Fisher (a) has been informed of the possibility of such damages or (b) is negligent. In no event will Thermo Fisher's liability exceed the total charge of this Service Agreement.

9. Indemnification:

Subject to the limitations described above, Thermo Fisher agrees to indemnify 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 of Thermo Fisher, its employees, agents or representatives in connection with its performance of Services.

10. 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 and (b) Statutory workers' compensation and employer's liability insurance. Copies of certificates of insurance evidencing the specified coverage are available upon request.

11. Customer Responsibilities:

Customer shall provide Thermo Fisher personnel reasonable access to the Equipment whenever Service is required. Customer shall cooperate with Thermo Fisher personnel so that Service can be performed efficiently and without interruption. Thermo Fisher shall be allowed use of Customer Equipment which Thermo Fisher personnel deem necessary to perform the Services. 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.

12. 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 by Customer 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. (f) Any provision(s) of this Agreement that in any way contravene 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. (g) In the event of any legal proceeding between the Seller and Buyer relating to this Agreement, neither party may claim the right to a trial by jury, and both parties waive any right they may have under applicable law or otherwise to a right to a trial by jury.

EXHIBIT A

1400 Northpoint Pkwy Ste 50
West Palm Beach, FL 33407-1976

Equipment Location Summary

[illegible]

EXHIBIT B
City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

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

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

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

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

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

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

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

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

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

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative.

No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's

Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

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

Sanctions:

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

Term:

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

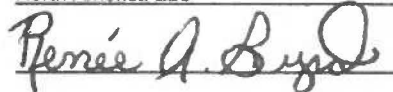
Dated this 13 _____ day of September _____, 2016

CONTRACTOR

Authorized
Signature

Title

Thermo Fisher Scientific-Thermo Electron
North America LLC



HR EEO Compliance Professional



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 04/14/2016 DEPT: Austin Police Department
TO: Purchasing Officer or Designee FROM: Albert Banda
BUYER: Erin D'Vincent PHONE: (512) 974-5273

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

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

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

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

- ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
- ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- ☐ a procurement for personal, professional, or planning services
- ☐ a procurement for work that is performed and paid for by the day as the work progresses
- ☐ a purchase of land or right-of-way
- ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for

equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits

- ☐ a purchase of rare books, papers, and other library materials for a public library
- ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

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

The Austin Police Department Chemical/Crime Lab owns a Thermo Fisher Scientific, Spectrometer UV-VIS Evolution 300 PC, Serial #EVOS128001 that is used in the analysis of evidence. This instrument was purchased in April of 2014, on CT870014042200484. The lab will continue to operate using this instrument in the processing of evidence. Therefore, it is necessary for the Department to enter into a maintenance agreement for this instrument. Thermo Fisher Scientific is the sole source equipment manufacturer and service provider for all Thermo Fisher Scientific spectrometers, parts, training, technical support, field service support, and software. Thermo Fisher has proprietary rights to the design and software utilized in the instrumentation. No other company has access to software, parts, or engineering resources necessary to maintain the original operating specifications for the Thermo Fisher system.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Thermo Fisher Scientific which will cost approximately \$ 20,304.06 (Provide estimate and/or breakdown of cost).

Recommended
Certification

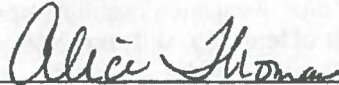


Originator

5-2-16

Date

Approved
Certification



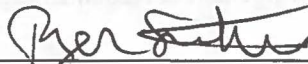
Department Director or designee

5-4-16

Date

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

Purchasing Review
(if applicable)



Buyer

Date



Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee

Date

02/26/2013

- ☐ 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.

Thermo Electron North America LLC

1400 Northpoint Pkwy Ste 50
West Palm Beach, FL 33407-1976

SUPPORT PLAN QUOTATION

QUOTATION Number:	20680497 / -4
Coverage Start Date:	May 12, 2016
Coverage End Date:	May 11, 2017
Quotation Expires:	May 12, 2016

CHRIS KIYAK
AUSTIN PD FORENSIC SCIENCE DIVISION
812 SPRINGDALE ROAD
AUSTIN TX 78727

Phone: 512-974-5104

Fax:

Email: CHRISTOPHER.KIYAK@AUSTINTEXAS.GO

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Customer agrees to make full payment within thirty days of invoice. Alternative payments are available at an additional finance fee. Prices shown on this sheet are exclusive of all state, local, use, excise and/or other taxes.

Material	Description	Serial Number	Price
10300201	Evolution 300 PC Control VISIONPRO Coverage: UNITY ESSENTIAL PLAN - SPECTRONIC	EVOS128001	4,136.00 USD

UNITY ESSENTIAL SUPPORT PLAN SPECTRONIC**Essential Support Plan Features:**

- ~ Unlimited number of demand on-site service visits with a maximum 72-hour response
- ~ Engineer labor and travel is included
- ~ Priority status for technical support inquiries
- ~ One (1) scheduled Preventative Maintenance visit
- ~ Kit of basic consumables required for routine Preventive Maintenance
- ~ Factory-certified replacement parts included
- ~ 10% discount on Institute based or on-site Trainings purchased during the contract validity period. Application or method development courses are excluded.
- ~ Software updates and notifications. Updates are defined as Software revisions that provide minor changes that are needed to correct or improve the previous version of the software. Software updates are normally indicated by a software revision number change e.g. version 1.1 to version 1.2.
- ~ Computers purchased from Thermo and are required for the operation of the system is covered under a Support Plan. Replacement of Computers that require an Upgrade to new operating systems are not included in a Support Plan.
- ~ One time 10% discount on Parts, Accessories or Consumables for end user during active contract. Contact our parts group at Unity Priority line 1-877-594-3224 and mention the Loyalty PACs program.

Base Coverage Exclusions:

- ~ Computers not provided and installed with the system by Thermo Fisher. Hardware and Operating System upgrades, replacing a HD with larger capacity.
- ~ Software version upgrades are not provided under a Support Plan. Upgrades are normally indicated by a software version number change e.g. version 1.2 to version 2.0.
- ~ Buy-in parts and engineering specials.
- ~ Consumable items such as UV and Xenon lamps, cassettes, diskettes, external cables, gaskets, grease, ink, o-rings, ribbons, tubing & connectors, cuvettes, glassware, special cell holders, Peltier systems, water baths, any other accessories and paper.
- ~ Unless covered by a specific contract option, third party accessories, GC ovens, autosamplers, mapping stages, all Raman lasers, 960 Raman lasers IS50 ATR Module, IS50 Beamsplitter Exchanger and sampling accessories (including Spectra-tech and Smart Accessories) and Tablets.
- ~ Complete system replacement is not covered under contract.

OPTION YEAR 1: 5/12/2017 THRU 5/11/2018 = \$4,011.92

OPTION YEAR 2: 5/12/2018 THRU 5/11/2019 = \$4,011.92

OPTION YEAR 3: 5/12/2019 THRU 5/11/2020 = \$4,011.92

OPTION YEAR 3: 5/12/2020 THRU 5/11/2021 = \$4,132.30

Support Plan Sub-Total	4,136.00	USD
Discount: 3.00%	-124.08	USD
Support Plan Total	4,011.92	USD

Thermo Electron North America LLC

1400 Northpoint Pkwy Ste 50
West Palm Beach, FL 33407-1976

SUPPORT PLAN QUOTATION

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CHRIS KIYAK
AUSTIN PD FORENSIC SCIENCE DIVISION
812 SPRINGDALE ROAD
AUSTIN TX 78727

Phone: 512-974-5104

Fax:

Email: CHRISTOPHER.KIYAK@AUSTINTEXAS.GO
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Dear CHRIS KIYAK,

Thank you for purchasing a Support Plan for your Thermo Scientific instrumentation. When you purchased your Thermo Scientific product, you gained a partner that is committed to your long term success. We understand the challenges you face today: increasing productivity and reducing costs, while achieving better results in less time.

According to our records, the Support Plan coverage for your Thermo Scientific product is nearing expiration. We have attached a quotation to continue your Support Plan coverage that will help you gain the greatest value from your technology investment by maintaining top performance from your instruments, maximizing uptime and productivity, and eliminating the uncontrollable cost of unplanned maintenance and repairs. We ask that you please review the attached quotation.

If you wish to accept this quotation, please sign the attached copy and return it, with your fax or hard copy Purchase Order to: Thermo Electron North America LLC, 5225 Verona Road, Madison, WI 53711 or fax to 877-867-8945.

We have included a document that summarizes the information in our database relating to your instrument. Please review this summary for accuracy. To update your information we ask that you simply fax the changes to the number provided on the summary. This will help us provide quick and accurate delivery, whether you need parts, technical support or service.

Thank you for your continued patronage. If you have any questions or concerns, please do not hesitate to contact us at 1-800-532-4752. Please use the document number shown at the top of this letter to reference this quotation or your instrument serial number listed in the quotation.

Sincerely,

STEVE WEBER

Thermo Electron North America LLC

1400 Northpoint Pkwy Ste 50
West Palm Beach, FL 33407-1976

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CHRIS KIYAK
AUSTIN PD FORENSIC SCIENCE DIVISION
812 SPRINGDALE ROAD
AUSTIN TX 78727

Phone: 512-974-5104

Fax:

Thermo Fisher Scientific looks forward to providing service on those instruments specified above subject to the terms and conditions stated on the attached document. 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 following pages as the sole and exclusive terms for your purchase. If you have questions, please call 800-532-4752 to contact your support plan specialist STEVE WEBER.

ACCEPTANCE OF SUPPORT PLAN

AUSTIN PD FORENSIC SCIENCE DIVISION

Thermo Electron North America, LLC

Signature

Date

Signature

Date

Support Plan Specialist

PO Number

Thermo Electron North America LLC

1400 Northpoint Pkwy Ste 50
West Palm Beach, FL 33407-1976

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(a) Customer agrees to make a single payment at the start of the Term of this Agreement in U.S. or Canadian currency equal to the total Service charge for the initial Term or, if applicable, payments in accordance with a mutually agreed payment schedule, as stated on the cover page hereto. All payments shall be net thirty (30) days of the date of the invoice.

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

(c) The annual charge to renew this Agreement for a subsequent Term shall be Thermo Fisher's standard service agreement rate in effect at the start of each Renewal. Thermo Fisher agrees to waive its right to bill the Customer for bringing the Equipment into good operating condition if there is no lapse between the end date of this Agreement and the beginning of the Renewal. Pricing of Services is based on the assumption that the Equipment operates in accordance with product specifications at the start of the Term; therefore, prior to the start of each Renewal, Thermo Fisher reserves the right to verify the Equipment condition and invoice Customer at its standard rates for service, travel or move, labor and parts.

4. Parts and Consumables:

The service level defines when and if the cost of parts is included under the Agreement. Notwithstanding the foregoing, the cost for parts that are consumed in the normal and usual operation of the Equipment including, but are not limited to, sample prep & analysis consumables, paper, ink cartridges, ribbons, pens, lamps and/or data media shall not be included under the Agreement.

5. Key Operator:

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

6. 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 Equipment described in this Agreement. Customer 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. Any Customer requests to modify or add non-Thermo Fisher approved devices or accessories to Equipment are outside the scope of this Agreement.

7. Warranty:

Thermo Fisher's sole obligation under this Agreement is to provide Service as described in Section 1 hereof. 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 AND ANY OTHER OBLIGATIONS OR LIABILITIES WHETHER IN CONTRACT, WARRANTY, NEGLIGENCE OR OTHERWISE.

8. Limitations and Exclusions:

(a) Repair of Equipment malfunction for the following abnormal conditions is not covered by this Agreement and if performed by Thermo Fisher will be invoiced to Customer at Thermo Fisher's standard rates for service, travel or move, 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, terrorism, 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 standard rates for service, travel or move, labor and parts.

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

(c) The servicing of non-Thermo Fisher material or instruments is not covered by this Agreement, including non-Thermo Fisher material or instruments 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.

(f) Service calls made as a result of Customer-identified areas of responsibility, i.e. malfunctions related to site facilitation (power, water, temperature, humidity, vibration, dust, etc.) or site

computer/data network problems or integrity.

(g) THERMO FISHER SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS AND BUSINESS INTERRUPTION ARISING OUT OF THE USE OR INABILITY TO USE ANY PARTS, EQUIPMENT OR SERVICES SOLD HEREUNDER, regardless of whether Thermo Fisher (a) has been informed of the possibility of such damages or (b) is negligent. In no event will Thermo Fisher's liability exceed the total charge of this Service Agreement.

9. Indemnification:

Subject to the limitations described above, Thermo Fisher agrees to indemnify 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 of Thermo Fisher, its employees, agents or representatives in connection with its performance of Services.

10. 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 and (b) Statutory workers' compensation and employer's liability insurance. Copies of certificates of insurance evidencing the specified coverage are available upon request.

11. Customer Responsibilities:

Customer shall provide Thermo Fisher personnel reasonable access to the Equipment whenever Service is required. Customer shall cooperate with Thermo Fisher personnel so that Service can be performed efficiently and without interruption. Thermo Fisher shall be allowed use of Customer Equipment which Thermo Fisher personnel deem necessary to perform the Services. 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.

12. 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 by Customer 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. (f) Any provision(s) of this Agreement that in any way contravene 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. (g) In the event of any legal proceeding between the Seller and Buyer relating to this Agreement, neither party may claim the right to a trial by jury, and both parties waive any right they may have under applicable law or otherwise to a right to a trial by jury.

1400 Northpoint Pkwy Ste 50
West Palm Beach, FL 33407-1976

Equipment Location Summary

[illegible]

ThermoFisher SCIENTIFIC

THERMO ELECTRON NORTH AMERICA LLC GENERAL INFORMATION

In response to your request for information and compliance certification, Thermo Fisher Scientific wholly owned subsidiary, Thermo Electron North America LLC, is providing you with the following information and certification.

Legal Entity Name (issue all PO's to): Thermo Electron North America LLC

PO Addresses: 1400 Northpoint, Pkwy Suite 10 5225 Verona Road
West Palm Beach, FL 33407 Madison, WI 53711

Phone: (800)532-4752 (800)532-4752
Fax: (561)688-8731 (412)200-6542

Remit to Address: PO Box 742775
Atlanta, GA 30374-2775

Federal ID: [REDACTED] **DUNS Number:** 138388090
IL Dept of Human Rights #: 122173-00 expires 9/3/2015

Number of Employees: Approximately 600

Date Incorporated: 2002

Parent Company: Thermo Fisher Scientific Inc
FEIN 04-2209186
Corporate Office Address:
81 Wyman Street
Waltham, MA 02451

Type of Business: Commercial sales and service organization for Thermo Fisher Scientific, which designs, manufactures, markets and services instrumentation for a broad range of analytical, chemical and electronic engineering problem solving applications in science and industry under the Thermo Scientific & Unity Lab Services brand names.

Quality Standards: Our quality practices are based upon ISO-9001 standards.
Certificate available upon request

Officers – Thermo Fisher Scientific:

President & CEO: Marc Casper
Sr. VP & CFO: Peter Wilver
Treasurer: Kenneth J. Apicerno
Assistant Treasurer: Maura A. Spellman
SR VP & Secretary: Seth H. Hoogasian

Bank Information:

Name: Bank of America
Contact/Phone: Charlotte Whitaker @ 888-715-1000 ext 35456
dedicatedsouththree@bankofamerica.com

Payment by ACH domestic only:	Payment by wire transfer domestic & international
Account number: 4426395065	Account number: 4426395065
ABA number: 111000012	ABA number: 026009593
	SWIFT CODE: BOFAUS3N

Please send Wire/ACH Remittance to: USPAL.WPB-FSSC@THERMOFISHER.COM
Fax: 877-680-2542

ThermoFisher SCIENTIFIC

April 11, 2016

Albert Banda
City of Ausin
812 Springdale Road
Austin, TX 78727

RE: Sole Source letter for support plan quotation 20680497/-3

Dear Albert,

Thermo Fisher Scientific is the sole source equipment manufacturer and service provider for all Thermo Fisher Scientific spectrometers, parts, training, technical support, field service support, and software.

The legal entity for your Thermo Fisher Scientific Evolution Instrument(s) is Thermo Electron North America LLC, which is a part of Thermo Fisher Scientific. Thermo Fisher Scientific is the world leader in analytical instruments, complimented by the most comprehensive services portfolio in the industry. Our instrument solutions enable our customers to make the world healthier, cleaner, and safer.

The Evolution 300 [EVOS128001] 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 instrument. Thermo Fisher Scientific Field Service Engineers (FSE's) are the only certified and factory trained engineers available to service the instrument, 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,

Thanks,
Steven Weber
Service Sales Specialist

Unity Lab Services
Part of Thermo Fisher Scientific
5225 Verona Road, Building 4
Madison, WI 53711

PH: (800) 532-4752 ext. 3216258 (toll free)

PH: (608) 276-6258 (direct)

CELL: (517)937-8588

FX: 877-867-8945

E: steven.weber@thermofisher.com

<http://www.unitylabservices.com>