



Amendment No. 5
to
Contract No. NS130000036
for
DNA Consumable Lab Supplies Contract
between
Life Technologies Corporation
dba Applied Biosystems, LLC
and the
City of Austin

- 1.0 The City hereby exercises the hold over provision of the above referenced contract for a period of one year in accordance with the hold over language in the "Term of Contract" provision which reads as follows:

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

- 2.0 Effective July 15, 2019 the term for the holdover will be July 15, 2019 to November 12, 2019.
- 3.0 The total contract amount is unchanged for the holdover period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 07/15/2013 – 07/14/2016	\$132,179.00	\$132,179.00
Amendment No. 1: Option 1 – Extension 07/15/2016 – 07/14/2017	\$46,226.00	\$178,405.00
Amendment No. 2: Option 2 – Extension 07/15/2017 – 07/14/2018	\$48,537.00	\$226,942.00
Amendment No. 3 – Price Increase (1.76%) 09/22/2017	\$0.00	\$226,942.00
Amendment No. 4: Option 3 – Extension 07/15/2018 – 07/14/2019	\$50,964.00	\$277,906.00
Amendment No. 5: Holdover 07/15/2018 – 11/12/2019	\$0.00	\$277,906.00

- 4.0 MBE/WBE goals do not apply to this contract.
- 5.0 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.
- 6.0 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: Patricia A. Trigueiro July 8, 2019

Printed Name: Patricia A. Trigueiro, Contracts Specialist
Authorized Representative

Sign/Date: B. Stewart 7/9/19

Bridney Stewart
Procurement Specialist II

Life Technologies Corporation
dba Applied Biosystems, LLC
5791 Van Allen Way
Carlsbad, California 92008
(800) 955-6288
patricia.trigueiro@thermofisher.com

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



Amendment No. 4
to
Contract No. NS130000036
for
DNA Consumable Lab Supplies Contract
between
Life Technologies Corporation
dba Applied Biosystems, LLC
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be July 15, 2018 through July 14, 2019. Zero options will remain.
- 2.0 The total contract amount is increased by \$50,964.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 07/15/2013 – 07/14/2016	\$132,179.00	\$132,179.00
Amendment No. 1: Option 1 – Extension 07/15/2016 – 07/14/2017	\$46,226.00	\$178,405.00
Amendment No. 2: Option 2 – Extension 07/15/2017 – 07/14/2018	\$48,537.00	\$226,942.00
Amendment No. 3 – Price Increase (1.76%) 09/22/2017	0.00	\$226,942.00
Amendment No. 4: Option 3 – Extension 07/15/2018 – 07/14/2019	\$50,964.00	\$277,906.00

- 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: Patricia A. Trigueiro

Printed Name: Patricia A. Trigueiro, Contracts Specialist
Authorized Representative

Life Technologies Corporation
dba Applied Biosystems, LLC
5791 Van Allen Way
Carlsbad, California 92008
(800) 955-6288
patricia.trigueiro@thermofisher.com

Sign/Date: Danielle Lord 7/2/18

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



Amendment No. 3
To
Contract No. NS130000036
For
DNA Consumable Lab Supplies Contract
Between
Life Technologies Corporation
dba Applied Biosystems, LLC
and the
City of Austin

- 1.0 The City hereby grants the requested one-and-seventy-six-hundredths percent (1.76%) rate increase. Prices will be adjusted as shown below in Table 2.0. The price increase will be effective on the date executed by both parties.

Part	Description	Old Price	Multiplier	New Price
402824	Buffer (10X) with EDTA	\$119.70	1.0176	\$121.80
4311320	HiDi Formamide Bottle	\$37.17	1.0176	\$37.82
4315933	Septa Strip, 96 Well Tray	\$385.35	1.0176	\$392.13
4316567	FG, Tube 8-String Optical	\$102.90	1.0176	\$104.71
4323032	FG, Optical Cap (8 Caps/Strips)	\$107.10	1.0176	\$108.98
4333464	Capillary Array	\$835.80	1.0176	\$850.51
4343895	Quantifiler Human DNA Kit	\$1,115.49	1.0176	\$1,135.12
4363752	3130 POP4	\$200.55	1.0176	\$204.07
N8010560	Microamp 96-Well RXN Plate	\$66.15	1.0176	\$67.31
N8010612	Autoclaved RXN Tubes w/Cap	\$244.65	1.0176	\$284.95

- 2.0 The total contract amount remains the same. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 07/15/2013 – 07/14/2016	\$132,179.00	\$132,179.00
Amendment No. 1: Price Increase (3% or 5%) 07/15/2016 Option 1 – Extension 07/15/2016 – 07/14/2017	\$46,226.00	\$178,405.00
Amendment No. 2: Option 2 – Extension 07/15/2017 – 07/14/2018	\$48,537.00	\$226,942.00
Amendment No. 3 – Price Increase (1.76%) 09/22/2017	\$0.00	\$226,942.00

- 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:

Patricia A. Trigueiro
September 21, 2017

Sign/Date:

Erin D' Vincent
9.22.17

Printed Name: Patricia A. Trigueiro
Authorized Representative

Life Technologies Corporation
dba Applied Biosystems, LLC
5791 Van Allen Way
Carlsbad, California 92008
(800) 955-6288
patricia.trigueiro@thermofisher.com

Erin D' Vincent
Procurement Specialist IV
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701

City of Austin

Contract NS130000036 - Forensic DNA Supplies

Life Technologies Corporation - Pricing (with price adjustment)

Part	Description	Current Pricing	Proposed Pricing	% increase	2017 Published List Price (www.thermofisher.com)
402824	10X Buffer	\$ 119.70	\$ 121.80	1.76%	\$134.00
4311320	HiDi	\$ 37.17	\$ 37.82	1.76%	\$41.20
4315933	96-well Septa	\$ 385.35	\$ 392.13	1.76%	\$422.00
4316567	tube, 8-string optical	\$ 102.90	\$ 104.71	1.76%	\$109.00
4323032	optical caps	\$ 107.10	\$ 108.98	1.76%	\$115.00
4333464	4-cap 3130 Array	\$ 835.80	\$ 850.51	1.76%	\$916.00
4343895	Quant Human kit	\$ 1,115.49	\$ 1,135.12	1.76%	\$1,432.00
4363752	3130 POP4, 3.5 ml	\$ 200.55	\$ 204.07	1.76%	\$216.00
N8010560	96-well rxn plate	\$ 66.15	\$ 67.31	1.76%	\$68.00
N8010612	.2ml reaction tubes	\$ 244.65	\$ 248.95	1.76%	\$254.00



Amendment No. 2
to
Contract No. NS130000036
for
DNA Consumable Lab Supplies Contract
between
Life Technologies Corporation
dba Applied Biosystems, LLC
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be July 15, 2017 through July 14, 2018. One option will remain.
- 2.0 The total contract amount is increased by \$48,537.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 07/15/2013 – 07/14/2016	\$132,179.00	\$132,179.00
Amendment No. 1: Option 1 – Extension 07/15/2016 – 07/14/2017	\$46,226.00	\$178,405.00
Amendment No. 2: Option 2 – Extension 07/15/2017 – 07/14/2018	\$48,537.00	\$226,942.00

- 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:

Handwritten signature of Patricia A. Trigueiro.

July 7, 2017

Printed Name: Patricia A. Trigueiro, Contracts Specialist
Authorized Representative

Life Technologies Corporation
dba Applied Biosystems, LLC
5791 Van Allen Way
Carlsbad, California 92008
(800) 955-6288
patricia.trigueiro@thermofisher.com

Sign/Date:

Handwritten signature of Linell Goodin-Brown.
7-10-17

Linell Goodin-Brown
Contract Compliance Supervisor
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 1
to
Contract No. NS130000036
for
DNA Consumable Lab Supplies
between
Life Technologies Corporation
and the
City of Austin



- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective July 15, 2016 to July 14, 2017. Two options will remain.
- 2.0 The City hereby grants the requested three percent or five percent (3% or 5%) rate increase and prices will be adjusted as shown below in Table 2.0.

Line #	Part #	Description	Old Price	Multiplier	New Price
1	402824	10X Buffer	\$114.00	1.05	\$119.70
2	4311320	HiDi	\$35.40	1.05	\$37.17
3	4315933	96-well Septa	\$367.00	1.05	\$385.35
4	4316567	tube, 8-string optical	\$98.00	1.05	\$102.90
5	4323032	optical caps	\$102.00	1.05	\$107.10
6	4333464	4-cap 3130 Array	\$796.00	1.05	\$835.80
7	4343895	Quant Human kit	\$1,083.00	1.03	\$1,115.49
8	4363752	3130 POP4, 3.5 ml	\$191.00	1.05	\$200.55
9	N8010560	96-well rxn plate	\$63.00	1.05	\$66.15
10	N8010612	.2ml reaction tubes	\$233.00	1.05	\$244.65

Table 2.0

- 3.0 The total contract amount is increased by \$46,226 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 07/15/2013 – 07/14/2016	\$132,179.00	\$132,179.00
Amendment No. 1: 1.1 Price Increase (3% or 5%) 07/15/2016	\$0.00	
1.2 Option 1 – Extension 07/15/2016 – 07/14/2017	<u>\$46,226.00</u> \$46,226.00	\$178,405.00

- 4.0 MBE/WBE goals do not apply to this contract.
- 5.0 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.
- 6.0 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: Patricia A. Trigueiro 08-03-16

Printed Name: Patricia A. Trigueiro

Authorized Representative

Life Technologies

3175 Staley Road

Grand Island, New York 14072

Patricia.trigueiro@thermofisher.com

760-476-7854

Sign/Date: Linell Goodin-Brown 8-5-16

Linell Goodin-Brown

Contract Compliance Supervisor

City of Austin

Purchasing Office

124 W. 8th Street, Ste. 310

Austin, Texas 78701



**Financial and Administrative Service Department
Purchasing Office**
721 Barton Springs Road, Austin, Texas, 78704

September 27, 2013

Life Technologies
Attn: Phillip Czar
3175 Staley Road
Grand Island, NY 14072

Dear Phillip:

The Austin City Council approved the execution of a contract with your company for Forensic DNA Supplies in accordance with the referenced solicitation.

Responsible Department:	Austin Energy
Department Contact Person:	Alberto Banda
Department Contact Email Address:	Alberto.Banda@austintexas.gov
Department Contact Telephone:	512-974-5273
Project Name:	n/a
Contractor Name:	Life Technologies
Contract Number:	NA 8700 NS130000036
Contract Period:	07/15/2013 - 07/14/2016
Dollar Amount	\$132,179.00
Extension Options:	Three 12-months options with annual amounts of \$46,226.00, \$48,537.00 & \$50,964.00 respectively
Requisition Number:	RQM 8700 13040900320
Solicitation Number:	n/a
Agenda Item Number:	53
Council Approval Date:	8/29/2013

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact Alberto Banda, Contract Manager at 512-974-5273.

Sincerely,

Terry Nicholson
Senior Buyer Specialist
Purchasing Office
Finance and Administrative Service Department

cc: A, Banda, APD
M. McClure, FASD

3.2 **Invoices.**

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

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

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

3.3 **Payment.**

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

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

3.3.3 The City may withhold or set off 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 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

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

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

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

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 **Travel Expenses.** No travel expense is authorized for this Contract.

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

3.6.1 The making and acceptance of final payment will constitute:

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

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

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** This Contract shall become effective on July 15, 2013 and shall remain effective for thirty-six (36) months and may be extended thereafter for up to three 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(s) 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 in writing).

4.1.2 Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in this paragraph.

4.1.3 This is a commodities contract. Prices are firm for the first twelve (12) months.

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

SECTION 5. OTHER DELIVERABLES

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

5.1.1 General Requirements

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

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

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

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

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

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

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

City of
Austin
Purchasing
Office
P. O. Box 1088

Austin, Texas 78767

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

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

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

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

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

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

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

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

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

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

5.1.2.1.2 Contractor/Subcontracted Work.

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

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

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

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

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

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

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage.

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

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

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

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

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC 420601, 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 C. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.1 **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 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 **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.
- 5.5 **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
- 5.6 **Contractor To Package Deliverables:** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
- 5.7 **Shipment Under Reservation Prohibited:** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.
- 5.8 **Title & Risk of Loss:** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.
- 5.9 **Delivery Terms and Transportation Charges.** Deliverables shall be shipped F.O.B. Destination unless otherwise specified. Shipping and handling charges will be prepaid by Contractor at Contractor's then-standard rates. The place for delivery shall be set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
- 5.10 **Right Of Inspection And Rejection:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
- 5.11 **No Replacement Of Defective Tender:** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract. In the event that time

for performance has expired, Contractor's liability for breach of this Article shall be limited to the value of this Contract.

SECTION 6. WARRANTIES

6.1 Warranty – Price.

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

6.2 Warranty – Deliverables. The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the manufacturer's specifications, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal and local laws, rules and regulations, and industry codes and standards. The Deliverables shall be new merchandise, not used or recycled.

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

B. Unless otherwise specified in the Contract, the warranty period shall be at ninety (90) days from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverable. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverable, or replace the non-conforming Deliverable with fully conforming Deliverable, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

C. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.

D. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

6.3 No Warranty by City Against Infringement. The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold harmless the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City exercises anywhere in the world of the rights associated with the City's ownership, and if

applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in the Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel of the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverable will not impact such warranties by Contractor.

SECTION 7. MISCELLANEOUS

7.1 Economic Price Adjustment. Prices shown in this contract shall remain firm for the first twelve (12) months of the contract period. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease may be requested by either the City or the Contractor subject to the following considerations.

7.1.1 Price Increases

7.1.1.1 Requests for price increases must be made in writing and submitted to the appropriate Buyer in the City's Purchasing Office. The letter must be signed by a person with the authority to bind the Contractor contractually, shall reference the contract number, and include the following documentation:

7.1.1.1.1 an itemized, revised price list with the effective date of the proposed increase;

7.1.1.1.2 copies of the documentation provided by the manufacturer regarding the proposed price increase if the Contractor is not the manufacturer of the products. If the Contractor is the manufacturer of the products, a letter so stating must be submitted.

7.1.1.3 Contractor shall submit as a part of the request for increase the version of the Producer Price Index(s) (Table 5-Producer Price Indices for the net output of selected industries and their products or Table 6-Producer price indexes and percent changes for commodity groupings and individual items not seasonally adjusted) Industry/Product name/code (the "Index") current as the date of the Contractor's Quotation and a copy of the index for the most current period.

7.1.1.4 Proposed price increases must be solely for the purpose of accommodating increases in the Contractor's costs for the products provided. Prices for products unaffected by verifiable cost trends shall not be subject to change.

7.1.2 Requests for price increases must be made in writing and submitted to the appropriate Contract Manager prior to each yearly anniversary date of contract. Prices will only be considered for an increase at that time. Once received, the City will have thirty (30) to review and approve/disapprove the requested increase. Should the City not agree with the requested increase, Contractor may either maintain the prices currently in effect, negotiate an acceptable increase with the City or terminate the contract.

7.1.3 Since the perceived need for price increases may be due in whole or in part to factors other than index changes, the City may consider approving fully-documented increase requests which, in the Contractor's opinion, justify price increases for one or more line items in the contract. If index changes are responsible in part for the requested change, those changes shall be documented as previously described above.

7.2 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.

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

7.3.1 disposal of major assets

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

7.3.3 any significant termination or addition of provider contracts;

7.3.4 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;

7.3.5 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;

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

7.3.7 known or anticipated sale, merger, or acquisition;

7.3.8 known, planned or anticipated stock sales;

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

7.3.10 significant change in market share or product focus.

7.4 Right To Audit.

7.4.1 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.

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

7.5 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.

7.6 Indemnity.

7.6.1 Definitions:

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

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

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

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

7.6.2 **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM. Notwithstanding anything to the contrary, neither party shall be liable for any consequential, incidental, indirect, special, reliance or punitive damages or for any lost profits or revenues, regardless of the legal theory under which liability is asserted.**

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

78767.

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

To the City:

City of Austin, Purchasing Office

ATTN: Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Life Technologies

ATTN: Phillip Czar

3175 Staley Road

Grand Island, New York 14072

7.9 **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.

7.10 **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.

7.11 **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.

7.12 **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.

7.13 **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.

7.14 **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.

7.15 **Assignment-Delegation.** The Contract shall be binding upon and inure 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.

7.16 **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.

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

7.18 **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.

7.19 **Dispute Resolution.**

7.19.1 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.

7.19.2 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.

7.20 **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.

7.21 **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.

7.22 **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.

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

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

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

Life Technologies

By: Ruba Ramakrishna
Signature

Name: Ruba Ramakrishna
Printed Name

Title: Sr. Contracts Specialist

Date: 9/12/2013

City of Austin

By: Danielle Lord
Signature

Name: C. Danielle Lord
Printed Name

Title: Corporate Contract Compliance Manager

Date: 9/12/13

List of Exhibits

Exhibit A	Contractor's Quotes
Exhibit B	Non Discrimination Certification

EXHIBIT A



QUOTATION

Effective Date: 7/16/2013 through 7/14/2014

TO ORDER:

Life Technologies Inc.
3175 Staley Road.
Grand Island, New York 14072 USA Fax Number: 1-800-331-2286 USA

To Order: 1-800-955-6288 USA
www.lifetechnologies.com

SKU # / PPL	Description	Qualifying Limit	Customer Price	Extended Price
402824	BUFFER (10X) WITH EDTA	8	\$114.00	\$912.00
4311320	HI-DI FORMAMIDE BOTTLE	8	\$35.40	\$283.20
4315933	SEPTA STRIP,96 WELL TRAY	6	\$367.00	\$2,202.00
4316567	FG,TUBE 8-STRING OPTICAL	8	\$98.00	\$784.00
4323032	FG,OPTICAL CAP (8 CAPS/STRIPS)	8	\$102.00	\$816.00
4333464	CAPILLARY ARRAY	9	\$796.00	\$7,164.00
4343895	QUANTIFILER HUMAN DNA KIT	15	\$1,083.00	\$16,245.00
4363752	3130 POP-4	36	\$191.00	\$6,876.00
N8010560	MICROAMP 96-WELL RXN PLATE -	8	\$63.00	\$504.00
N8010612	AUTOCLAVED RXN TUBES W/ CAP,	10	\$233.00	\$2,330.00
			Total:	\$38,116.20

THESE GOODS ARE FOR RESEARCH ONLY, UNLESS OTHERWISE SPECIFIED. SEE "AUTHORIZED USES" IN GENERAL TERMS AND CONDITIONS AS LISTED ON LIFE TECHNOLOGIES INVOICES.

TERMS AND CONDITIONS OF QUOTATION

1. This quotation shall apply only to direct order purchase from Life Technologies Corporation. In order to receive quoted prices, the quotation number must be referenced at time of order. Credits will not be issued for orders not referencing quotation numbers.
2. The effective dates of this quotation appear in the upper right corner of each page unless otherwise noted. Exceptions are noted within the body of this quotation. The quantities and purchase requirements noted on this quotation reflect minimum requirements necessary to receive quoted prices.
3. Percentage discounts in this quotation will be calculated from Life Technologies' current list price for the applicable product. Discounts will be calculated from single unit catalog price. Life Technologies guarantees pricing for the term of this quotation. Any increase or decrease to the list price of a product would result in a change to your discounted price. Certain discounts are based on categories of products (e.g., "Pricing Product Line" or "PPL" discounts) that might change over time. Life Technologies reserves the right to re-align products within a category or add or remove products to or from a specific category at any time. Such re-alignment, addition or removal may result in a change to your discounted price for a particular product.
4. This quotation contains confidential Life Technologies pricing information which if disclosed to third parties could cause competitive harm to Life Technologies. Subject to overriding obligations to third party funding agencies or governmental entities, the customer agrees to keep all pricing information contained herein confidential.

**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 12th day of September, 2013

CONTRACTOR

Authorized Signature

Title

Life Technologies Corporation
[Signature]
Sr. Contracts Specialist



MEMORANDUM

Austin Police Department *Administrative Bureau*

TO: Alice Suter, Assistant Director, acting on Behalf of Art Acevedo,
Chief of Police

FROM: Albert Banda, Contract Compliance Specialist Sr.

DATE: July 25, 2013

SUBJ: Signature on sole source memo to purchase DNA Supplies from
ABI/Life Technologies for the next 36 months with an additional 3/12
month options to extend by the City of Austin Police Department
Forensic/DNA Unit, in the amount of \$132,178.65 for the initial 36
months and \$153,013.31 for years 4-6 for a total estimated cost of
\$285,191.96 which includes freight cost, additional items to be
purchased not listed on quote and annual price escalation.

Chief or Assistant Director Alice Suter, attached for your review and signature is a sole source memo for the above referenced purchase. This purchase is for purchase of DNA Supplies for a 6 year contract in the amount of \$285,191.96. I have attached as backup the PRF, quote and sole source documentation.

Please call me when ready for pick up.

If you have any questions, please contact me at 974-5273.

AB/ab

**CITY OF AUSTIN
FSD - PURCHASING OFFICE**

CERTIFICATION OF EXEMPTION

DATE: 7/25/2013	DEPT: Austin Police Department
TO: Purchasing Officer or Designee	FROM: Albert Banda
BUYER: Colleen Athey	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.

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)

- | | |
|--|---|
| <p><input type="checkbox"/> 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</p> <p><input type="checkbox"/> a procurement necessary to preserve or protect the public health or safety of municipality's residents</p> <p><input type="checkbox"/> a procurement necessary because of unforeseen damage to public machinery, equipment, or other property</p> <p><input type="checkbox"/> a procurement for personal, professional, or planning services</p> <p><input type="checkbox"/> a procurement for work that is performed and paid for by the day as the work progresses</p> <p><input checked="" type="checkbox"/> a purchase of land or right-of-way</p> <p><input checked="" type="checkbox"/> 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</p> | <p>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</p> <p><input type="checkbox"/> a purchase of rare books, papers, and other library materials for a public library</p> <p><input type="checkbox"/> 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</p> <p><input type="checkbox"/> 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</p> <p><input type="checkbox"/> a payment under a contract by which a developer participates in the construction of a public</p> |
|--|---|

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.

The APD DNA Laboratory currently utilizes Life Technologies/ABI equipment for the analysis and quantification of DNA. The Life Technologies test kits, (Profiler Plus, Cofiler and Quantifiler kits) have all been validated and licensed for use on the LT/ABI equipment. LT/ABI is the developer of the only integrated-systems approach that includes validated reagent kits, instruments, analysis software, technical training, and customer support services. Utilization of any other manufacture's consumables such as test kits and reagents/solutions would require an extensive validation process before the DNA lab could certify test results. It would be very difficult to validate new consumables on the current inventory of testing equipment. All DNA Analysts at the APD have been trained in analysis using these kits and solutions/reagents and have attended training classes taught by LT. The DNA Analysts have knowledge of expected results with the LT kits. This knowledge allows for the easy recognition of problems with the quality of data. If the analysts work with consumables they have no prior experience with, it would be hard to know what is typical vs. atypical. When troubleshooting problems, the use of consumables and equipment from the same manufacturer is beneficial. Life Technologies can support both equipment and consumables. If another manufacture's reagents/solutions are utilized, it would be very difficult to determine if the problem lies with the consumables or with the equipment. Life Technologies Corporation is the sole manufacture and distributor for all ABI products used for forensic Human

Identification purposes. These products are sold direct, and are available exclusively from Life Technologies Corporation. LTC does not have authorized distributors in the United States.

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.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Life Technologies Inc., for 36 months with three (3) twelve (12) month extension options, which will cost approximately, \$38,116.20 annually for a total contract cost of \$228,697.20.

Recommended Certification

Albert Banda 4-9-13
Originator Date
Albert Banda, Contract Compliance Specialist Sr.

Approved Certification

Alice Suter 4-16-13
Department Director or designee Date
Alice Suter on behalf of Chief of Police Art Acevedo

Michael McDonald 4/18/13
Assistant City Manager / General Manager Date
or designee
Michael McDonald, ACM

Purchasing Review
(if applicable)

[Signature] 7/25/13
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee Date

3/26/13

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CERTIFICATION OF EXEMPTION

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| <input type="checkbox"/> a procurement necessary to preserve or protect the public health or safety of municipality's residents | <input type="checkbox"/> a purchase of rare books, papers, and other library materials for a public library |
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| <input type="checkbox"/> a procurement for work that is performed and paid for by the day as the work progresses | <input type="checkbox"/> a payment under a contract by which a developer participates in the construction of a public |
| <input type="checkbox"/> a purchase of land or right-of-way | |
| <input type="checkbox"/> 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 | |

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

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Albert Banda, Contract Compliance Specialist Sr.

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Department Director or designee Date
Alice Suter on behalf of Chief of Police Art Acevedo

Michael McDonald 4/18/13
Assistant City Manager / General Manager Date
or designee
Michael McDonald, ACM

Purchasing Review
(if applicable)

[Signature] 7/25/13
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee Date

3/26/13



April 4, 2013

Dear Mr. Banda:

Please accept this letter to document that Life Technologies Corporation is the sole manufacturer and distributor for all Applied Biosystems products used for forensic Human Identification purposes. These products are sold direct, and are available exclusively from Life Technologies Corporation,

Life Technologies Corporation does not have authorized distributors in the United States.

This information should justify Life Technologies Corporation as your "Sole Source" supplier for the instruments, software, consumables and services that you need to perform DNA Analysis, for the purpose of Human Identification.

If you need any further information please feel free to contact me at your convenience.

Regards,

Phillip Czar
Senior Account Manager
Life Technologies
Phillip.czar @lifetech.com



Life Technologies
5791 Van Allen Way
Carlsbad, CA 92008 USA
Telephone +1 760 603 7200
Facsimile +1 760 603 7229
www.lifetechnologies.com

Via Email: alberto.banda@austintexas.gov

April 3, 2013

Albert Banda
Contract Compliance Specialist Sr.
APD Procurement & Contract Compliance Services
Phone 512-974-5273
Fax 512-974-5960
alberto.banda@austintexas.gov

RE: Request for Solicitation No. 8700DNASUPPLIES; Life Technologies' Quote No. H177170 ;
Due Date: April 5, 2013

Dear Mr. Banda:

Thank you for the opportunity to respond to the City of Austin Request for Solicitation 8700DNASUPPLIES for Forensic DNA Supplies. This bid opportunity will result into a 36 month award with the pricing set forth in Life Technologies Quote No. H177170 to remain firm for the first twelve months of the contract (July 14, 2014). Pricing will then be negotiated on an annual basis. Please accept Life Technologies' response package, which includes the following:

- Life Technologies Quote No. H177170- Valid Until July 14, 2014
- Certificate of Insurance
- Life Technologies Exceptions to the City of Austin Standard Purchase Terms and Conditions.

Please note that freight will be FOB Destination with Shipping and handling charges prepaid by Life Technologies Corporation (Contractor) at Contractor's then-standard rates, and added to Contractor's invoice for payment by the City of Austin.

Life Technologies' Corporation requests that the attached City of Austin Standard Terms and Conditions govern any resulting purchase order be comprised with the referenced Life Technologies General Terms and Conditions of Sale ("Sales Terms") and in the event of conflict, the Sales Terms will prevail along with the exceptions taken by Life Technologies to the City of Austin Standard Terms and Conditions.