



Amendment No. 1
to
Contract No. NS190000006
for
Maintenance Agreement for Waters LC/MS
between
Waters 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 January 20, 2020 through January 19, 2021. The second and third options under Section 3.1 will remain.
- 2.0 The total contract amount is increased by \$27,199.97 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 01/01/2016 – 12/31/2018	\$26,407.74	\$26,407.74
Amendment No. 1: Option 1-Extension 01/20/2020 – 01/19/2021	\$27,199.97	\$53,607.71

- 3.0 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.
- 4.0 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: Mark N. Groudas 12/17/2019

Sign Date: Brenita Selement 12/17/19

Printed Name: Mark N. Groudas
Authorized Representative

Waters Technologies Corporation
34 Maple Street
Milford MA 01757
Waters_quotes@waters.com

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

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Waters Technologies Corporation
For
Maintenance Agreement for Waters Liquid Chromatograph/Mass Spectrometer
MA 8700 NS190000006**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Waters Technologies Corporation ("Contractor"), having offices at 34 Maple Street, Milford, MA 01757.

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 the services 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 City shall request an additional Contractor quotation and the parties will execute an amendment to this contract.

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 Kimberly Sokolowski, Phone: (800) 252-4752, Email Address: kimberly.sokolowski@waters.com. The City's Contract Manager for the engagement shall be Ralph Salazar, Phone: (512) 974-5273, Email Address: ralph.salazar@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 notify the City Contract Manager.

SECTION 2. SCOPE OF WORK

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

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

2.2.1 Contractor shall provide services, pursuant to the Contractor's Total Assurance Plan, attached hereto as Exhibit B and incorporated herein, for laboratory equipment for the City's Police Department as described on the Waters Technologies Corporation quotation number 21867790 attached hereto as Exhibit A.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$26,407.74 for the initial Contract 01/20/2019 – 01/19/2020 term, \$27,199.97 for the first extension 01/20/2020 – 01/19/2021 option, \$28,015.95 for the second extension 01/20/2021 – 01/19/2022 option, and \$28,856.44 for the third extension 01/19/2022 – 01/19/2023 option, for a total not-to-exceed \$110,480.10 for all fees and expenses pursuant to Exhibit A.

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 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 invoice.

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 Delay in making payment by the City will not operate to extend the term specified in the Plans. Waters may, at its option, suspend service during any period in which the City has failed to make payments in a timely manner. Such suspension of service shall not limit any other legal remedies to which Waters may be entitled.

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.

3.3.6 Delay in making payment by the City will not operate to extend the term specified in the Plans. Waters may, at its option, suspend service during any period in which the City has failed to make payments in a timely manner. Such suspension of service shall not limit any other legal remedies to which Waters may be entitled.

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.**

3.5.4 The making and acceptance of final payment will constitute:

3.5.4.1 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 the warranty obligations, or (5) arising under the City's right to audit; and

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

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 upon request from the City.

5.1.1.3 Upon request, 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 City requests services. 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 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.

5.1.1.6 All endorsements, 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

OR

PURInsuranceCompliance@austintexas.gov

5.1.1.7 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.

5.1.1.8 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.

5.1.1.9 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.

5.1.1.10 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.

5.1.2 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.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall become effective on January 20, 2019 ("Effective Date") and shall remain in effect for an initial term of twelve (12) months. The Contract may be extended beyond the initial term for up to three (3) additional twelve (12) month periods subject to the approval of the Contractor and the City. The term of service provided under the Plans shall commence as of the Plan Effective date provided on the acknowledgement copy of the Plan and shall continue as provided in the applicable service Plan subject to execution of each renewal option and receipt of purchase order.

4.1.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, written 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, which shall be greater than thirty (30) days, 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.

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. 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.** Either Party 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. The Plans may be canceled upon thirty (30) days written notice by either party. Cancellation by the City shall be subject to a 15% cancellation charge which shall be used as an offset against the amount refunded, this is not an additional charge. All refunds shall be made on a pro-rata basis. The refunded amount will be prorated by first subtracting the list price of the parts and service delivered against the contract, from the purchase price of the contract. If the canceled Plan was a multiple year agreement, the additional discount savings for the year canceled and any previous years of the agreement will also be deducted from the refund. Waters will prorate the remaining amount based on the length of the contract remaining.

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.**

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 – Services. The Contractor agrees and acknowledges that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with the Scope of Work the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

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

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 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.

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.

7.4 Significant Event. The Contractor shall notify the City's Contract Manager of any current "significant event" that would solely affect the services under this Contract. 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:

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

5.1.2.1.4 **Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, 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:

5.1.2.3 **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.

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

5.2 **Equal Opportunity.**

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

5.2.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.3 **Acceptance of Incomplete or Non-Conforming Deliverables.** Intentionally Omitted

5.4 **Delays.**

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest.

5.4.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, delays of any kind in transportation or inability to obtain material or equipment 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 to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.4.3 Contractor will use reasonable best efforts to provide prompt service, but will not be liable for any damage resulting from (i) delays in rendering service; (ii) delays in performing repairs; or (iii) delays in delivery or shipment of the Equipment. IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR SPECIAL, CONSEQUENTIAL, ECONOMIC OR INCIDENTAL DAMAGES (SUCH AS INSTRUMENT DOWN TIME, LOST PROFITS, LOST DATA, ETC.).

- 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 With a thirty (30) day written notice, 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, any and all records of the Contractor related to the performance under this Contract, at its sole expense. 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 Records Retention:

7.5.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.5.2.2 All Records provided by Contractor to the City are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization.

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.

7.7 Indemnity. Intentionally Omitted

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 affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within thirty (30) 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. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

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

To the City:

City of Austin, Purchasing Office

ATTN: John Hilbun, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Waters Technologies Corporation

ATTN: Kimberly Sokolowski, Contract Manager

34 Maple Street

Milford, MA 01757

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. No obligation shall be imposed on either party with respect to any information which: (a) at or before the time of disclosure is, or becomes through no act or omission of either party, part of the public domain; (b) was known, as shown by independently verifiable written records, to either party at or prior to disclosure, provided that such knowledge was not gained from third parties through breach of secrecy obligations; (c) is subsequently disclosed to either party by a third party having no obligation of confidentiality with respect to the information; or (d) is required to be disclosed by any governmental, judicial or administrative proceeding, including a Texas Public Information Act request, provided that the parties will take reasonable precautions to notify the other party of such disclosure prior to the event.

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 either party without the prior written consent of the other party. Any attempted assignment or delegation by either party 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, purchase 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 thirty (30) 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 with the same skills, ability and training, 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.

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., . .

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, 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

8. **Inspection and Certification.** A commitment of the multi-year service plans will not require pre-inspection to renew. If a service plan isn't renewed according to the renewal expiration date and it is determined that a new service place is required, pre-inspection may be required prior to Contractor accepting Equipment for coverage

under the new Service Plans. Contractor may, at its option, inspect and certify that the Equipment is functioning properly. Equipment and software must meet current performance standards and must be operated in an environment and system configuration acceptable to Contractor. Service including parts, labor or travel required to bring the Equipment to performance standards acceptable to Contractor is not covered by the Plans. This service must be authorized by the City, completed and paid for prior to initiating Plan coverage. The cost for such service provided to the City will be invoiced at the rates in effect at the time the service is provided. Equipment covered by the product warranty issued at the time of purchase by the City may be converted to Plan coverage without a pre-plan inspection by Contractor.

9. **Service and Repair.** Service and repair of the Equipment will be provided by an authorized Contractor Service Representative. Contractor may use one or more of the following service options to replace or repair Equipment:

- (a) dispatch a Contractor service representative to the City's facility; or
- (b) provide for repair or replacement of the Equipment at a Contractor repair facility; or
- (c) provide delivery of replacement components to the City, with instructions for installation of the components by the City.

In providing service under the Plans, Contractor may, at its option, use components that are "reconditioned," i.e., assemblies and parts which have been re-manufactured by Contractor to meet current hardware and firmware revisions as well as the product quality and performance testing requirements for new products. Contractor may, while performing service on the Equipment, replace outdated hardware, firmware and software with current revisions. Contractor cannot guarantee the continued availability of outdated assemblies.

10. **Return of Equipment** Contractor will accept the return of Equipment (or component parts of such Equipment) only when accompanied by a Return Authorization Number ("RAI#") issued by a Contractor City Service representative prior to shipment of the Equipment by the City.

11. **Limited Service and Product Warranty** Contractor warrants that the service performed and the products and parts supplied to repair or replace the Equipment conform to average standards of workmanship and materials then prevailing in the trade. Contractor's obligations for software consulting, training and documentation services shall be limited to providing the selected services on a best efforts basis. CONTRACTOR MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The sole obligation of Contractor shall be to repair or replace any Contractor non-conforming product or part during the term specified in the Plans. This warranty shall not be deemed to have failed of its essential purpose as long as Contractor is willing and able to repair or replace any Contractor non-conforming product or part covered by the plan selected by the City. In the event that an instrument covered by a service plan cannot be repaired, Contractor reserves the right to provide to the City: (a) Prorated refund or credit of the purchase price, or (b) Prorated credit towards the purchase of a replacement instrument.

12. **Exclusions**

The Plans cover Equipment repairs and maintenance which results from normal use and operation of the Equipment. Contractor will not be obligated to perform service on Equipment which, in its sole reasonable judgment:

- (a) has been improperly installed, altered or damaged;
- (b) has been repaired by other than an authorized Contractor Service Representative;
- (c) has been altered or damaged as a result of additions or changes made to the Equipment by the City or others;
- (d) has been damaged due to decomposition resulting from chemical action, environmental or operating conditions;
- (e) has been damaged due to operator failure to perform standard operating procedures and routine maintenance, including the replacement of common replacement parts (using Contractor-approved parts and supplies), as set forth in Contractor published literature and manuals;
- (f) has been damaged due to transfer of the Equipment by the City from the location specified in the Plans without supervision by Contractor;
- (g) has been damaged due to the use of operating supplies and maintenance parts which do not conform to Contractor's specifications.

Repair of damage(s) caused by the use of such supplies or parts is not covered under the terms of the Plan. Service (parts, labor and travel) required to repair such damage(s) will be invoiced at the rates in effect at the time the service is rendered.

13. **Relocation of Products.**

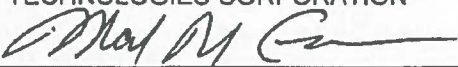
- (a) The City shall give Contractor thirty (30) days written notice prior to any relocation of products covered by on-site support services being provided under this Agreement.

- (b) Products moved to a location within the contiguous United States shall continue to be serviced under this Agreement. The response time and charges will be adjusted to reflect the new location.
- (c) Products moved outside the contiguous United States may continue to be serviced under this Agreement, at the option of Contractor. The services to be provided and charges for such services shall be subject to mutual agreement.
- (d) For installed products which will continue to be serviced, Contractor, at its option, may supervise the dismantling and packing of the products and may inspect and reinstall products at the new location. These services, if provided, shall be at additional charge based on Contractor standard service rates in effect at the time. The City shall furnish full labor and materials for the dismantling, packing and placement of the products in the new location.
- (e) The City shall be responsible for any loss or damage to the products during relocation.

14. **Agents, etc.** No agent, employee or other representative has the right to modify or expand Water's standard warranty applicable to the Plans or to make any representations other than those set forth in Contractor literature and any such affirmation, representation or warranty, if made, should not be relied upon by City and shall not form a part of this quotation.

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

WATERS TECHNOLOGIES CORPORATION

By: 
Signature

Name: Mark Groudas
Printed Name

Title: VP, Americas Field Operations

Date: May 7, 2019

CITY OF AUSTIN

By: 
Signature

Name: JOHN HILBUN
Printed Name

Title: CONTRACT MGMT SPECIALIST IV

Date: 05/13/19

List of Exhibits

Exhibit A	Waters Technologies Corporation Quotation #21867790 ("Contractor's Quote")
Exhibit B	Waters Total Assurance Statement of Coverage for Services
Exhibit C	Non Discrimination Certification, Section 0800



Ralph Salazar
City of Austin
Austin Police Dept
812 Springdale Rd
AUSTIN TX 78702-4040
USA

Service Plan Offering
QUOTATION 21867790 is valid until 01/19/2019

Total Assurance Plan

Dear Salazar,

Please find enclosed the Service Plan renewal documents for your Waters equipment. To ensure that the products you wish to be covered under this plan are correctly entered in our Support Management System, please verify the accuracy of the serial numbers for each module. Please advise us immediately of any corrections and we will forward a revised renewal document for your approval.

To ensure continuity of support and maintenance for your Waters products, please submit your purchase order and any other documents to be reviewed, and or signed, prior to your renewal date.

It is our desire that you continue receiving all the benefits that this Support Plan offers. Plan coverage will avoid additional costs such as labor, travel and parts, therefore your prompt attention is greatly appreciated.

We look forward to continue providing you with the legendary service you have come to expect.

Waters Corporation

Kimberly Sokolowski
Phone: 800-252-4752
Email: kimberly_sokolowski@waters.com

Quotation number : 21867790
Account number : 257123
Quotation Valid From : 11/06/2018
Quotation Valid Until : 01/19/2019

Total Assurance Plan with one PM - QUOTATION
Coverage from 01/20/2019 to 01/19/2020
City of Austin

Price in US dollars

Total Assurance Plan

The Total Assurance Plan (TAP) offered is fully comprehensive. A number of Performance Maintenance (PM) visits are included as specified below. At time of PM a Waters factory trained engineer will replace all parts subject to wear as defined in our product specific PM checklist. All parts are guaranteed genuine Waters Quality Parts, and are included in a comprehensive PM parts kit which is provided for each and every PM visit. The thoroughness of Waters Performance Maintenance program ensures both maximum reliability AND maximum performance. No competitor offers a more comprehensive PM program. All required corrective maintenance is also included in the Total Assurance Plan. Our Total Assurance Plan customers receive top priority response time for all visits. As with PM visits, all parts used in corrective maintenance are guaranteed, factory-tested, Waters Quality Parts.

As an option you can add Calibration (Cal) which consists of a single point test which serves as a check of instrument performance, or Qualification (Qual) which includes more comprehensive component level testing (Operational Qualification or OQ), and system level testing (Performance Qualification or PQ), and more extensive documentation.

Gross Price	27,797.64	Customer number : 257123
Discount	1,389.90	Invoicing Terms: Annual
Total with Discount	26,407.74	Payment Terms: NET 30 DAYS

Kimberly Sokolowski
Service Sales Specialist
Email: Kimberly_Sokolowski@Waters.com
Phone 800-252-4752 ext 3466

Total Assurance Plan with one PM - QUOTATION
Coverage from 01/20/2019 to 01/19/2020
City of Austin

Additional Notes

Pricing contained in this quote is for Service Plan Coverage only. Taxes may be applied at time of invoicing where applicable.

****PLEASE REFERENCE THIS QUOTE NUMBER ON YOUR PURCHASE ORDER ****

All pricing on this quotation is subject to change, unless otherwise noted in a signed agreement. Pricing on this quotation is valid through date stated as "Quotation Valid Until"

*** Payment Terms Subject to Credit Review ***

THE TOTAL COLUMN REFLECTS A 5% VOLUME DISCOUNT.

THIS VOLUME DISCOUNT HAS BEEN BASED ON THE PRODUCTS LISTED BELOW. ANY ADDITION OR DELETION OF EQUIPMENT MAY INCREASE, REDUCE OR ELIMINATE THE DISCOUNT.

** Option year pricing is an estimate. A renewal quotation will be submitted annually and will be based on current pricing on the GSA Schedule. **

BASE YEAR 1/20/19 thru 1/19/20 \$ 26,407.74

OPTION YEAR 1 - 1/20/20 THRU 1/19/21 - \$ 27,199.97

OPTION YEAR 2 - 1/20/21 THRU 1/19/22 - \$ 28,015.95

OPTION YEAR 3 - 1/20/22 THRU 1/19/23 - \$ 28,856.44

TX Smart Buy fee of 1.522% is collected and remit them to the State of Texas in the same fashion as we collect the IFF for all GSA sales as stated above.

As applicable, the following shall apply:

Waters Tax ID# 04-3234558

Waters DUNS# 10-7186004

System for Award Management Registration current through: October 10,2019

Note: The promotional discount(s) are greater than and therefore supersede your GSA contractual discount. GSA items include an Industrial Funding Fee set by GSA. Waters is required to collect this fee on behalf of GSA as a condition of sale under contract # GS-07F-0559X. This contract # must be referenced on all purchase orders. Note: A training certificate will be sent to you after receipt of order. The certificate will be valid for one year. Open Market items may require a Trade Agreements Act waiver from GSA at order placement. One-time spot discounts have been applied to pricing herein. GSA is responsible for payment of all shipping costs for Open Market Items. Freight charges noted are ESTIMATED. Actual freight charges will appear as a separate line item on the invoice



Waters

THE SCIENCE OF WHAT'S POSSIBLE.™

Quotation number	: 21867790
Account number	: 257123
Quotation Valid From	: 11/06/2018
Quotation Valid Until	: 01/19/2019

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Coverage from 01/20/2019 to 01/19/2020
City of Austin

Additional Notes

Quotation number : 21867790
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Total Assurance Plan with one PM - QUOTATION
Coverage from 01/20/2019 to 01/19/2020
City of Austin

Price in US dollars

Ralph Salazar
Tel : 512-974-5273
Email : ralph.salazar@austintexas.gov

LABORATORY Austin Police Department

Serial number	Description	Contract Start	Contract End	Unit Price	Quoted Price
SQD with H-Class					
Total Assurance Plan with one PM					
LBA866	740002553 - TAP ACQUITY SQ DETECTOR (1PM)	01/20/2019	01/19/2020	17,072.25	16,218.63
System Total Amount					16,218.63
UPLC/SQD					
Empower BASIC Personal Software Plan					
EM1PA01782	740000809 - WATERS SOFTWARE BASIC PLAN PERSONAL	01/20/2019	01/19/2020	2,042.49	1,940.36
Total Assurance Plan					
K11CHA571G	740999999 - QUOTE UPLOAD NO-PRICE	01/20/2019	01/19/2020	0.00	0.00
Total Assurance Plan with one PM					
F11SDI474G	740003855 - TAP ACQUITY H-Class SM-FTN (1PM)	01/20/2019	01/19/2020	3,666.80	3,483.46
J11QSM837A	740003834 - TAP ACQUITY H-Class QSM (1PM)	01/20/2019	01/19/2020	2,739.80	2,602.81
K11UPL352A	740003065 - TAP ACQUITY eLambda DETECTOR (1PM)	01/20/2019	01/19/2020	2,276.30	2,162.48
System Total Amount					10,189.11
Total Amount (except taxes)					26,407.74

STATEMENT OF COVERAGE

For the coverage period and price set forth in the Quotation for Waters® Instruments' Total Assurance Plan, Waters Corporation shall provide the Customer with the maintenance services, repair services and other on-site and off-site services to keep Waters instruments performing in accordance with the operating specifications set forth in the applicable user documentation.

Each new Total Assurance Plan Customer will receive this Statement of Coverage, which details the materials, parts and services provided under the terms of a Waters Corporation Total Assurance Plan. For so long as Waters offers coverage, the Total Assurance Plan is renewable for successive one-year periods at the charges and on the terms in effect at the time of renewal. In connection with each renewal, Waters will provide the Customer with any modified plan terms.

Service Availability

During the coverage period, Waters will provide scheduled maintenance service where required and available, as well as any additional repair and maintenance services required for the listed instruments including optional components installed within the instrument(s).

Priority service response will be accorded to Total Assurance Plan Customers when required. (Scheduling of services and resources for Total Assurance Plan Customers will take precedence over non-plan customers.) Service is provided during normal business hours (9:00 AM – 5:00 PM, Monday – Friday). Service is not available when Waters offices are closed in observance of legal holidays.

Service will be delivered at Waters option in one of three ways:

1. A service representative will be dispatched to the Customer's site.
2. The instrument will be serviced at an off-site Waters repair facility.
3. Replacement parts with appropriate installation instructions will be shipped to the Customer.

Service provided under the Total Assurance Plan does not ensure uninterrupted operation of the Customer's systems or instruments contained therein.

Materials, Parts and Services Provided

Performance Maintenance will be provided at a mutually agreed upon time, during which Performance Maintenance (PM) Kits (where available) will be installed. These PM Kits contain the general maintenance parts (subject to changes related to product improvements) listed below:

Solvent Management Systems/Pumps

- Plunger Replacement
- Plunger Seal Replacement
- Check Valve Replacement/Rebuilding
- Solvent Filter(s) Replacement
- Draw Off and Reference Valve Rebuilding

Waters

TOTAL ASSURANCE PLAN FOR WATERS INSTRUMENTS

Sample Management Systems Auto-Injectors and Injectors

- Seal Pack and Needle Rebuilding or Replacement
- Fluid Pack Rebuilding or Assembly Replacement
- Fluid Pack Syringe Replacement
- Manual Injector Rebuild Kit Installed

Non-Mass Spectrometry Detectors

- Source Lamps
- Lens/Window replacement as required

Mass Spectrometry Systems

- Vacuum Pump Maintenance Parts
- System Cleaning Materials
- Fan Filters, Valve Rebuild Kits, 'O' Rings

In the event of heavy use or internal operating practices, additional scheduled Performance Maintenance visits are available as an extra-charge option for Total Assurance Plans. The Total Assurance Plan includes all parts and service labor required for the repair of non-functioning instrumentation including the supply (and installation if not Customer installable) of additional maintenance parts as required. The supply and installation of parts as required to maintain the level of performance required to meet Waters Compliance/Qualification testing requirements will be provided (if Qualification Services Option is purchased with the Total Assurance Plan).

Telephone Technical Support

During the coverage period, the Customer shall receive Plan priority telephone technical support from the applicable Waters office during such office's normal business hours.

Coverage Exclusions

The Total Assurance Plan does not include the supply or installation of the following:

A. Operating Supplies

The Customer is responsible for purchasing and installing operating supplies without any on-site assistance of a Waters Field Service Engineer.

The following is a list (but not inclusive to) operating supplies and consumables not covered by any Total Assurance Plan:

- Solvents, Mobile phase
- Columns, Column Packings
- Calibration standards
- Glassware, Sample vials and holders, Priming syringes
- Reagents, Sample and Solvent Filters, Printer Cartridges and Toner, Integrator and Printer Paper, Computer Diskettes, CDs, Tapes

B. Installation of Customer Installable Maintenance Parts and Operating Supplies

Only during a Performance Maintenance Visit will Waters Field Service Engineer install Customer-installable normal wear and maintenance parts. [Normal wear and maintenance parts are defined as parts and components in all Performance Maintenance Kits.]

The following is a list (but not inclusive) of normal wear and maintenance parts that are considered to be Customer-installable only:

- Pump plunger seals
- Pump check valve cartridges
- Injector syringes
- Filters
- Fuses
- Absorbance detector source lamps
- MS detector sample cones, Probe capillaries and fittings, 'O' rings
- Vacuum pump oil, filters and seals
- Tubing and tubing connectors
- Columns

C. Non-Waters System Components

The Total Assurance Plan does not include service coverage for non-Waters instruments and accessories that are connected to the Waters instrumentation covered by the Plan. It is the Customer's responsibility to obtain service coverage for such components from the original equipment manufacturer.

The following is a list (but not inclusive) of non-Waters system accessories and instruments.

- Computers and computer peripherals
- Non-Waters detectors
- MS system water chillers

Waters shall be under no obligation to provide repair and maintenance service under the Total Assurance Plan if (i) the instrument has been modified without the prior approval of Waters, (ii) the instrument has been worked on or serviced by person(s) not certified by Waters, (iii) the instrument contains parts other than Waters Quality Parts® for maintenance or repair, or (iv) the instrument is contaminated with radiological, chemical or biological hazards.

The Total Assurance Plan does not include any service or supply of material(s) that may be occasioned by (i) the Customer's failure to continuously provide a suitable operating environment, (ii) the Customer's failure to follow Waters' installation, operation or maintenance instructions, (iii) Customer abuse misuse or neglect or (iv) use of a Customer generated calibration/performance verification/qualification procedure. Waters Corporation has no responsibility or liability for failure to deliver services during the plan coverage period due to (i) the lack of a Customer request for such services or (ii) the Customer not providing adequate time or access to the equipment.

Limited Warranty

Waters warrants to the Customer that the services performed under the Total Assurance Plan will be of a quality conforming to generally accepted industry standards and practices and that its personnel performing services under this Plan shall have appropriate skills. Except as set forth herein, WATERS MAKES, AND THE CUSTOMER RECEIVES, NO WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, ARISING IN ANY WAY OUT OF, RELATED TO, OR UNDER THIS PLAN OR THE PROVISION OF SERVICES THEREUNDER, AND WATERS SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Disclaimer and Limitation of Liability

IN NO EVENT WILL WATERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES DUE TO LOSS OF PROFITS, REVENUE, DATA, INFORMATION, OR USE, EVEN IF WATERS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOR SHALL WATERS HAVE ANY LIABILITY FOR ANY CLAIM OF ANY THIRD PARTY. Waters' total liability to the Customer for damages, from any cause whatsoever, and regardless of the form of action, whether in contract or in tort, including negligence, shall be limited to the charges the Customer paid to Waters for the Total Assurance Plan during the period when the cause of action arose.

EXHIBIT C
City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (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, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office 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, 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 City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

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

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation 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.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

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 and non-retaliation 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 REQUEST, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:


Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy 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 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, 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 payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 7th day of May, 2019

CONTRACTOR
Authorized
Signature


Mark Goudas

Title

VP, Americas Field Operations



City of Austin Purchasing Office

Sole Source Certificate of Exemption

DATE: 11/8/2018 DEPT: Austin Police Department
TO: Purchasing Officer or Designee FROM: Albert Banda
PURCHASING POC: Erin D'Vincent PHONE: 512/974-5273

Chapter 252 of the Local Government Code requires that municipalities comply with certain competitive solicitation procedures before entering into a contract requiring an expenditure greater than \$50,000, unless the expenditure falls within an exemption listed in Section 252.022 or other applicable law.

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

This Certificate of Exemption must be complete, fully executed, and filed with the City Purchasing Office.

The City has deemed this procurement to be exempt from the competitive solicitation requirements of LGC Chapter 252 based on the following facts:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this sole source request:

- ☒ Items that are available from only one source because of patents, copyrights, secret process, or natural monopolies.
- ☐ Films, manuscripts or books that are available from only one source.
- ☐ Gas, water and other utilities that are available from only one source.
- ☐ Captive replacement parts or components for equipment that are only available from one source.
- ☐ Books, papers and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials.
- ☐ 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.

2. Describe this procurement including the following information as applicable:

- What it is for and why it is needed?
Maintenance, Preventative Maintenance & Repair services for a UPLC/MS
- What is the municipal purpose that this procurement addresses or furthers?
This service is needed to maintain APD's Instrument Ultra Performance Liquid Chromatograph Mass Spectrometer
- Why is the procurement a sole source?
Because the vendor is the only organization that provides services related for maintenance and repair of this type of instrument
- Has this procurement or a similar procurement been competitively solicited in the past?
NO
- Why is the vendor the only viable solution?
They are the sole provider of this type of instrument
- Are there any other alternative solutions? If so, why are those alternatives unacceptable?
No
- Is there a concern regarding warranty, compatibility, and/or routine safety?
No
- Are there territorial or geographic restrictions for the product distribution and sale?
NO
- Are there other resellers, distributors, or dealers in the market?
NO
- What other suppliers or products/services were considered?
None
- If the product is designed to be compatible with existing equipment/item/system, describe the age, value and useful life remaining of the current equipment/item/system. What is the estimated cost of buying new equipment/item/system? What is value of buying the addition versus buying all new?
approx. \$185,000.00, in 2014 when initially purchased
- Is there a way to retrofit another brand? What is this estimated associated cost?
NA
- What specialized training or certifications are necessary to maintain or repair the equipment/item/system? Is it specific to the proposed vendor?
- **Prices were determined to be reasonable based on the following (select all that apply):**
 - ☒ Prices are the same or similar to current City contract.
Notes: At a minimum, note the City of Austin contract number and title.
 - ☐ Prices are the same or similar to current contract with another government.
Notes: At a minimum, note the contract number, title and government that created the contract.
 - ☐ Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers.
Notes: At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).
 - ☐ Prices are established by law or regulation.
Notes: At a minimum, note the legal or regulatory reference that established the prices.
 - ☐ Other means of determining Price Reasonableness.
Notes: Describe any other source that was used to establish Price Reasonableness.

* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

Place holder for department
sole source description area

This is a one (1) year contract with three (3) twelve (12) month options to extend, for Preventative Maintenance & Repair services for a Liquid Chromatograph/Mass Spectrometer Serial #'s EM1PA01782, F11SDI474G, J11QSM837A, K11UPL352A, &K11CHA571G located at the Austin Police Department, Forensics Lab at 812 Springdale Road, Austin, Texas 78702. This instrument was purchased in 2011 on CT87001112900253 from Waters Technologies. Waters is the only organization that provides services related for maintenance and repair for this instrument LC/MS. Only Waters personnel possess the requisite product knowledge and specialized training to provide these services. This contract will replace our existing contract NA140000157 that will expire on 1/19/19, without options to extend.

3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:

- ☐ Scope of Work or Statement of Work or Vendor Proposal
- ☒ Vendor's Quote
- ☐ Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule
- ☒ Vendor's or Manufacturer's (if vendor is a sole authorized distributor) sole source letter: less than 6 months old, signed by an authorized representative, and on company letterhead, should clearly state they are the sole provider and explain why

4. Based on the above facts and supporting documentation, the City of Austin has deemed this procurement to be exempt from competitive procurement requirements pursuant to Texas Local Government Code section 252.022(7) and will contract with:

(Vendor Name): Waters Technologies for

(Description of Procurement): PM & Repairs to UPLC/MS

5. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:

- ☐ This is a one-time request for \$ _____
- ☒ This is a multi-term contract request for 12 (# months for base term) in the amount of \$ 26407.74 with 3/12 month options (# of renewal options) for \$ see attached quote each for a total contract amount of \$ 110,480.10.

Recommended
Certification

Alberto Banda

Originator

Date

Approved
Certification

Alice Thomas

Department Director or designee

Date

Assistant City Manager / General Manager
(procurements requiring Council approval)

Date

Purchasing Office
Review

Authorized Purchasing Office Staff

Date

Purchasing Office
Management Review

Purchasing Officer or designee
(procurements requiring Council approval)

Date

Sole Source Justification

Over the course of fifty years, Waters has provided service and support on all of its systems globally. Waters systems are defined as integrated platforms of instruments, informatics, chemistry and applications. The infrastructure of service and support that Waters provides to these systems is unique and cannot be alternatively sourced. This infrastructure has evolved based on the requirements of our customers as they push the boundaries of current technology. Service is more than just the delivery of repair and maintenance. It is the delivery of systems support to our customers, who have varying levels of experience and expertise, which enables them to meet their objectives.

Waters service and support delivers:

1) Waters Quality Parts

- i) Approximately 50% of all Waters HPLC and UPLC parts are manufactured by Waters directly. The majority of these parts cannot be alternatively sourced.
- ii) Waters manufactures its parts using specific quality standards, packaged under proprietary critical clean conditions.
- iii) Waters stocks the largest inventory of parts so that global supply is assured.

2) Technical Expertise

- i) Customer technical support on Waters instruments, informatics and chemistry is only available from Waters on Waters systems.
- ii) Applications support on Waters systems is only available from Waters.
- iii) Waters service engineer support is only available to Waters service engineers.

3) Training

- i) Waters service engineers are trained by Waters factory-certified trainers who are kept up to date on all system updates and global customer feedback. This cannot be replicated by any other service organization.
- ii) Customer training on Waters systems is only available from Waters.

iii) Only Waters offers complete systems-certified training to Waters service engineers.

4) Upgrades

- i) Waters instruments may be entitled to factory-directed updates and these are produced only by Waters.
- ii) Instrument and software upgrades for Waters systems are only available from Waters.

5) Compliance

- i) Waters offers the only automated qualification protocols on Waters systems.

6) Remote monitoring & diagnostics

- i) Waters offers the only platform capable of accessing instrument diagnostics remotely on Waters systems.

Sincerely,



Dave Terricciano

Vice President, Global Operations and Support

Waters Corporation

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