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THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

**AGREEMENT FOR PURCHASE, IMPLEMENTATION, VALIDATION
AND EMPLOYEE TRAINING FOR THE USE OF AUTOMATED ROBOTICS FOR
FORENSIC DNA ANALYSIS**

1. PARTIES

A. Address

**THIS AGREEMENT FOR PURCHASE, IMPLEMENTATION, VALIDATION AND
EMPLOYEE TRAINING FOR THE USE OF AUTOMATED ROBOTICS FOR FORENSIC
DNA ANALYSIS ("Agreement") is made on the Countersignature Date between the CITY OF
HOUSTON, TEXAS ("City"), a home rule city of the State of Texas, and APPLIED
BIOSYSTEMS, LLC ("Contractor"), a Delaware limited liability company doing business in Texas.**

The initial addresses of the parties, which one party may change by giving written notice to
the other party, are as follows:

City

Contractor

Chief, Houston Police Department
City of Houston
P.O. Box 1562
Houston, Texas 77251

Applied Biosystems, LLC
850 Lincoln Centre Drive
Foster City, CA 94404
Attention: Phillip Czar
Email:Phillip.czar@lifetech.com
(210) 286-1414

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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EXHIBITS

- A. Scope of Services
- B. Project Phases, Deliverables & Costs
- C. Equal Employment Opportunity
- D. Drug Policy Compliance Agreement
- E. Drug Policy Compliance Declaration
- F. Certification of No Safety Impact Positions
- G. Project Schedule
- H. Form POP 2 - Certification of Agreement to Comply With Pay or Play Program

- C. Parts Incorporated

The above described exhibits are incorporated into this Agreement.

- D. Controlling Parts

If a conflict among the sections and exhibits arises, the sections control over the exhibits.

E. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original.

APPLIED BIOSYSTEMS, LLC

CITY OF HOUSTON, TEXAS

Signed by:

By: *Polly S*
Name: Polly Singh
Title: Sr. Contracts Specialist

By: *Arnise D. Parker*
Mayor *Matthew D. Kriss*

WITNESS:

ATTEST/SEAL:

By: *Phillip G. Balogh*
Name: Phillip G. Balogh
Title: Sr. Contract Specialist

Christina Russell
City Secretary

APPROVED:

John D. Wells
City Purchasing Agent

APPROVED AS TO FORM:

COUNTERSIGNED BY:

Lam P. Nguyen
Sr. Assistant City Attorney
L. D. File No. 0371000130001

Ronald C. King
City Controller *Ch. B. King*

DATE COUNTERSIGNED:

8-24-10

.II. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"City Purchasing Agent" is defined as the person or duly authorized successor, authorized in writing to act for the City. The term includes, except as otherwise provided in this Contract, the authorized representative of the City Purchasing Agent acting within the limits of delegated authority.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.

"Deliverables" mean delivery and installation of instrumentation, validation and training of staff, as described in Exhibit "B".

"Director" means the Chief of the Houston Police Department, or the person he or she designates.

"Documents" mean notes, manuals, notebooks, plans, computations, databases, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.

"Include" and "including", and words of similar import, shall be deemed to be followed by the

the words "without limitation".

"Installation Site(s)" means the Houston Police Department Crime Laboratory located at 1200 Travis, 26th Floor, Houston, Texas 77002.

"Notice to Proceed" means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance.

"Parties" mean all the entities set out in the Preamble who are bound by this Agreement

III. DUTIES OF CONTRACTOR

A. Scope of Services

Services in General

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit "A".

B. Coordinate Performance

Contractor shall coordinate its performance with the Director and other persons that the Director designates. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

C. Payment of Subcontractors

Contractor shall make timely payments to all persons and entities, if any, supplying labor, materials, or equipment for the performance of this Agreement. CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.

D. Schedule of Performance

Time of Performance

The Director shall provide Contractor a written Notice to Proceed specifying a date to begin performance (Start Date). Contractor shall begin its performance no later than the Start Date and shall continue to perform diligently until this Agreement is terminated or all services are completed, whichever comes first.

Schedule

Contractor acknowledges that time is of the essence. Contractor shall complete the following project phases according to the schedule in Exhibit "G", unless the Director approves a different time of completion in writing:

Phase 1 - Delivery and Installation of Instrumentation

Phase 2 - Validation

Phase 3 - Training of 10 staff members in manual processes

Phase 4 – Training of 10 staff members in robotic processes

E. Time Extensions

If Contractor requests an extension of time to complete its performance of each project phase, then the Director may, in his or her sole discretion, extend the time so long as the extension does not exceed 7 days for each project phase. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

F. RELEASE

CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

G. INDEMNIFICATION

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**

- (2) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND
- (3) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

H. INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE

COSTS, AND INTEREST) AND DAMAGES AWARDED.

CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

I. INDEMNIFICATION – SUBCONTRACTOR'S INDEMNITY

CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

J. INDEMNIFICATION - PROCEDURES

(1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 30 days. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,

- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

K. Insurance

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

- (1) Commercial General Liability insurance including Contractual Liability insurance:
 - \$500,000 per occurrence; \$1,000,000 aggregate
- (2) Workers' Compensation:
 - Statutory amount
- (3) Professional Liability
 - \$1,000,000 per occurrence; \$1,000,000 aggregate
- (4) Automobile Liability insurance
 - \$1,000,000 combined single limit
- (5) Employer's Liability (cannot be used as a substitute for Workers' Compensation)
 - Bodily Injury by accident \$100,000 (each accident)
 - Bodily Injury by Disease \$100,000 (policy limit)
 - Bodily Injury by Disease \$100,000 (each employee)

Defense costs are excluded from the face amount of the policy.

Aggregate Limits are per 12-month policy period unless otherwise indicated.

All insurance policies must require on their face, or by endorsement, that the insurance carrier

waives any rights of subrogation against the City. Contractor shall give 30-day advance written notice to the Director if, any of its insurance policies are cancelled, materially changed or non-renewed. Within the 30-day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or nonrenewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may

- (1) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
- (2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

L. Warranties

Contractor warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

With respect to any parts and goods it furnishes, Contractor warrants:

- (1) that all items are free of defects in title, design, material, and workmanship,
- (2) that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,

- (3) that each replacement item is new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and
- (4) that no item or its use infringes any patent, copyright, or proprietary right.

M. Confidentiality - Protection of City's Interest

Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, "the Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section.

N. Use of Work Products - City May Use All Documents

(1) The City may use all notes, plans, computations, databases, tabulations, exhibits, photographs, reports, underlying data and other work products (collectively, the "Documents") that Contractor prepares or obtains under this Agreement.

(2) Contractor warrants that it owns the copyright to the Documents.

(3) Contractor shall deliver the original Documents to the Director on request. Within five working days after this Agreement terminates, Contractor shall deliver to the Director the original Documents, and all other files and materials Contractor produces or gathers during its performance under this Agreement.

O. Licenses and Permits

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including

all professional licenses required by any statute, ordinance, rule, or regulation. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license.

P. Compliance with Laws

Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

Q. Compliance with Equal Employment Opportunity Ordinance

Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C".

R. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office, provided Contractor shall not be required to conduct post-accident testing if the accident does not give rise to a reasonable suspicion of drug/banned substances use or otherwise violate the provisions of California law.

(2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- (a) a copy of its drug-free workplace policy,
- (b) the Drug Policy Compliance Agreement substantially in the form set forth in

Exhibit "D" together with a written designation of all safety impact positions and,

- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F".

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "E". Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

(3) Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

S. Pay or Play

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement, in the form of the attached Exhibit "H".

IV. DUTIES OF THE CITY

A. Payment Terms

Contractor shall perform all the services (inclusive of travel expenses to come to Houston for project implementation, validation and training as set out under this Agreement) and furnish the Deliverables set out in this Agreement in consideration for the City's payment of **\$297,300.00** plus an extended three year warranty of **\$55,137.60**, for a total amount **\$352,437.60**, subject to allocation of funds as set out below.

B. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

C. Method of Payment

The City shall pay on the basis of invoices submitted by Contractor upon completion of Phase 1 and Phase 4 in the amounts as provided on Exhibit "B" and approved by the Director, showing the services performed and the attendant charges. The City shall pay Contractor within 30 days of the receipt and approval of the invoices.

D. Method of Payment - Disputed Payments

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a

subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

E. Limit of Appropriation

(1) The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of **\$352,437.60** to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

(3) The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

\$ _____

(4) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

F. Access to Installation Site

Contractor may enter and leave the premises at all reasonable times without charge. Contractor and its employees may use the common areas and roadways of the premises where it is to perform the services together with all facilities, equipment, improvements, and services provided in connection with the premises for common use. This excludes parking for Contractor's personnel. Contractor shall repair any damage caused by it or its employees as a result of its use of the common areas.

G. Additions and Deletions

The City, by written notice from the Director or City Purchasing Agent to the Contractor, at anytime during the term of this contract, may add or delete like or similar equipment, locations and/or services to the list of equipment, locations and/or services to be provided. Any such written notice shall take effect on the date stated in the notice from the City. Similar equipment, supplies, services, or locations added to the contract shall be in accordance with the contract specification/scope of services, and the charges or rates for items added shall be the same as specified in Exhibit "B". In the event that the additional equipment, supplies, locations and/or services are not identical to the item(s) already under contract, the charges therefore will then be the Contractor's

Contractor's normal and customary charges or rates for the equipment, supplies, locations and/or services provided in Exhibit "B".

H. Estimated Quantities Not Guaranteed:

The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of services during the term of this Agreement. The quantities may vary depending upon the actual needs of the Department. The quantities specified herein are good faith estimates of usage during the term of this Agreement. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into based on the City purchasing all the quantities specified herein.

I. Changes

(1) At any time during the Agreement Term, the Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.

(2) The Director will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of Notice]

SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:

[Signature of Director]

(3) The Director may issue more than one Change Order, subject to the following limitations:

- (a) Council expressly authorizes the Director to approve a Change Orders up to \$25,000. A Change Order of more than \$25,000 must be approved by the City Council.
- (b) If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
- (c) The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.

(4) Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this

Agreement, Contractor may request a time extension for the completion of the work. The Director's decision regarding a time extension is final.

(5) A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.

(6) Change Orders are subject to the Allocated Funds provisions of this Agreement.

V. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and remains in effect for one year unless sooner terminated under this Agreement (the "Initial Term").

B. Renewals

If the Director, at his or her sole discretion, makes a written request for renewal to Contractor at least 30 days before expiration of the then-current term and if sufficient funds are allocated, then, upon expiration of the Initial Term, this Agreement is renewed for two successive one-year terms upon the same terms and conditions.

At the end of the second successive one-year term, if the Director extends this Agreement to permit Contractor to complete its performance, then, the Director may in his or her sole discretion extend the time so long as such extension does not exceed 90 days. The 90-day extension of time does not require an amendment of the Agreement and Contractor is not entitled to damages for delay(s) regardless of the cause of such delay(s).

C. Termination for Convenience by City

The Director may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section IV.A. unless the fees exceed the allocated funds remaining under this Agreement.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM CITY'S TERMINATION FOR CONVENIENCE.

D. Termination for Cause by City

If Contractor defaults under this Agreement, the Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the

in the future. Default by Contractor occurs if:

- (1) Contractor fails to perform any of its duties under this Agreement;
- (2) Contractor becomes insolvent;
- (3) all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- (4) a receiver or trustee is appointed by Contractor.

If a default occurs, the Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The Director, at his or her sole option, may extend the termination date to a later date. If the Director allows Contractor to cure the default and Contractor does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation of the City.

To effect final termination, the Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

E. Termination by Contractor

Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date. The date must be at least 30 days after the Director receives the notice. Contractor, at its sole option, may extend the proposed

termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

VI. MISCELLANEOUS

A. Independent Contractor

Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Contractor's performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all workers' compensation benefits coverage.

B. Force Majeure

1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, strikes, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by

the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra Reimbursable Expenses or payment.

2. This relief is not applicable unless the affected party does the following:
 - (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
 - (b) provides the other party with prompt written notice of the cause and its anticipated effect.

3. The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the Director is final.

4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.

5. If the Force Majeure continues for more than 5 days from the date performance is affected, the Director may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

C. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

D. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

E. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

F. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement is Harris County, Texas.

G. Notices

All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery

delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

H. Captions

Captions contained in this Agreement are for reference only, and therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

I. Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

J. Inspections and Audits

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

K. Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

L. Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

M. Survival

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

N. Publicity

Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.

O. Parties In Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

P. Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets

set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

Q. Business Structure and Assignments

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Contractor shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

R. Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

S. CONTRACTOR DEBT

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT

CONTRACTOR HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

EXHIBIT "A"

SCOPE OF SERVICES

**Implementation, Validation, and Staff Training
For Forensic DNA Analysis Robotics**

A. CONTRACTOR'S RESPONSIBILITIES

Task 1. Hardware and Software Installation, Validation,

1. Contractor shall provide the City with two Tecan robots to automate DNA quantification, amplification setup, and post-amplification sample preparation for STR DNA analysis at the Houston Police Department Crime Laboratory Division with the technical specifications proposed by Contractor in response to City's RFP S37-T23661. The planned equipment purchases include:
 - 1.1 **Tecan HID EVolution – qPCR/STR setup**, or approved equal, for Applied Biosystems Quantifiler quantification, sample dilution, and Identifiler amplification set-up.
 - 1.2 **Tecan Freedom EVO 100 Platform with 8-Channel Liquid Handling Arm**, or approved equal, for post-amplification sample preparation for the Applied Biosystems 3100 Genetic analyzer.
2. Contractor warrants that it can provide all the professional services (inclusive of travel expenses to come to Houston for Project implementation validation and training) set out in the response to the request for proposal for **\$297,300.00** plus an extended three year warranty for **\$55,137.60**.
3. Contractor shall submit the following System Documentation documents to the Director:
 - 3.1 User Manuals;
 - 3.2 Technical Manuals;
 - 3.3 Online Help;
 - 3.4 Training Manuals;
 - 3.5 Configuration Guides;
 - 3.6 System Software Release Notes.
4. Contractor shall integrate the robotic software with the LIMS Software on the Houston Police Department architecture with the ability to support the data requirements of HPD.
5. After implementation, the contractor shall validate the new equipment and procedures and train HPD staff on their use.

6. The Contractor shall provide 18-20 days of instruction and installation assistance for all hardware to be purchased by the City for this implementation and shall document the competence of the trained personnel. The City shall provide a minimum of 10 people to learn and assist in installing the hardware around the lab.

Acceptance Standards for Task 1

1. Contractor shall have completed Task 1 when Contractor has successfully completed all responsibilities in the sole discretion of the Director as set out below:
 - 1.1 Provide a detailed project plan subject for the Director's approval.
 - 1.2 Configuration
 - 1.3 Installation and testing of the robotic hardware and software
 - 1.4 Validation of all software, hardware and processes.
 - 1.5 Integration with LIMS.

Task 2. Training

1. In consultation with the Director, Contractor's Project Manager shall schedule hands-on training sessions in using the robots at HPD as set out below during a period of 18-20 days, non-consecutive. Contractor will provide a training curriculum that includes: Course objectives; Training Manuals; Quick reference sheets.
 - 1.1 The Contractor shall provide training and document the competence of up to 10 staff on all new equipment and processes. This training shall be provided at the HPD Crime Laboratory. Components of the training that do not require hands-on activities may be provided electronically, with prior approval of HPD Crime Laboratory. Lecture training may be provided to the entire group together; laboratory training should be performed in groups of no more than 5 at one time.
 - 1.2 The Contractor shall provide training manuals and materials sufficient for subsequent training of additional staff.
 - 1.3 The Contractor shall provide written documentation of all validation and training that is consistent with ASCLD/LAB International and FBI DNA Quality Assurance Standards.

Acceptance Standards for Task 2

1. Contractor shall have completed Task 2 when Contractor has successfully completed all responsibilities in sole discretion of the Director as set out below:

- 1.1 Training
 - 1.1.1 Training for Laboratory Staff
- 1.2 Quality Assurance Standards
 - 1.2.1 Written documentation of all validation and training

Task 3. Implementation

- 1. Upon receipt of a Notice to Proceed and in consultation with the Director, Contractor shall submit the System implementation schedule to the Director for approval. Contractor shall begin implementation according to the approved implementation schedule in Exhibit "G" and in Phases to coincide with Exhibit "B"- "Project Phases, Deliverables and Costs". Upon implementing each Phase of the Project, according to the approved Project implementation plan, Contractor shall submit to the Director for approval or acceptance the Deliverable for that Phase as listed in Exhibit "B."

Acceptance Standards for Task 3

- 1. Contractor shall have completed Task 3 when Contractor has completed successfully completed all responsibilities in sole discretion of the Director as set out below:
 - 1.1 Robots are functional and usable for a minimum of 30 days with no corrections based on software or interface errors.

B. PROJECT MANAGEMENT

Upon receipt of a Notice to Proceed from the Director, Contractor shall assign a Project Manager to work with the Director to implement the Project. Contractor's Project Manager shall be responsible for coordinating the training (described below) with the Director. Contractor's Project Manager shall also be the Director's contact person for troubleshooting and operational matters after the City accepts the System.

C. PROJECT IMPLEMENTATION SCHEDULE

Contractor shall implement the project according to the initial Project Schedule in EXHIBIT "G", except as modified by the Change Order process per the contract.

D. TECH SUPPORT AND MAINTENANCE

Contractor shall provide the City with technical support and maintenance for the Robots and the hardware and software licensed from Contractor or a third party, which shall include access to Contractor's trained, experienced and skilled technical support staff via:

1. Contractor's telephone number at 800-821-4443 (Applied Biosystems products: 3100, Quantifiler, Yfiler, 7500); 1-800-832-2687 (Tecan Robot Support) to allow City Crime Lab personnel to call in with any functional errors they encounter while operating the equipment, Monday through Friday, 7:00 A.M. to 5:00 P.M., Central Time, excluding Contractor's holidays (Christmas and Thanksgiving Days); Saturdays and Sundays 7:00 A.M. to 5:00 P.M., Central Time. Contractor shall have a majority of support calls from City answered directly by a member of Contractor's technical staff. In the event a staff member is not available immediately, City Crime Lab personnel shall leave a message and Contractor's staff shall respond to such a message within one hour. Contractor shall provide the Director with 30 days' prior written notice regarding a change in Contractor's number 1-800-821-4443.
2. Contractor's fax number at 240-379-4146 to allow City Crime Lab personnel fax supporting data to Contractor's technical support staff regarding problems encountered on the equipment;
3. Contractor's e-mail at HIDTechSupport@lifetech.com, 24 hours a day, to enable City Crime Lab personnel to contact Contractor's technical support staff via e-mail about problems encountered with the System;
4. Contractor's help-desk at 1-800-821-4443, 24 hours a day, seven days a week (except Contractor's holidays on Christmas and Thanksgiving Days), to allow City Crime Lab personnel to contact Contractor's technical staff for help with problems encountered with the System. Contractor's help-desk operator shall direct such calls to Contractor's technical consultants and in the event a consultant is not available then to the voice mail box for the consultant to return such calls within one hour of receiving the same.

E. GENERAL:

1. The Contractor shall deliver fully functioning robotics processes to quantitate extracted DNA samples, perform necessary sample dilutions, set up samples for amplification, and set up amplified samples for genetic analysis, using the equipment and reagents noted above.
2. The Contractor shall modify the current Quantifiler protocol, which utilizes the AB7000, for use on the AB7500 and validate Quantifiler Duo and Yfiler.
3. The Contractor shall provide any needed scripts and/or robotics programming in order to transfer information to and from AB real-time thermocyclers, AB3100 genetic analyzers, and the Porter-Lee Beast Laboratory Information Management System (LIMS), where necessary. Note: The Tecan quotes that detail the scripts being provided as part of the equipment purchase can be supplied upon request. Contractor Note: The scripts provided with the instrumentation are part of the instrument and are part of the purchase price.

Applied Biosystems may periodically require, and request, assistance from an appropriate IT professional from Houston Police Department to assist with access to, and interface with, existing Houston Police Department IT systems. This will insure that the integrations of the new technologies will not conflict with any existing IT systems protocols, system's access, or procedures that currently exist within the Houston Police Department IT infrastructure.

4. The Contractor shall provide written protocols to cover all new processes, as well as required equipment maintenance. The format of these protocols shall be consistent with current HPD Crime Laboratory protocols.
5. The Contractor shall validate all new or modified processes.
6. The Contractor shall provide all reagents, consumables, and samples required to complete all aspects of this contract with the exception of 25 non-probative casework extracted and quantitated DNA samples, to be provided by HPD Crime Lab.

EXHIBIT "B"

PROJECT PHASES, DELIVERABLES & COSTS

Phase 1: Delivery and Installation of Instrumentation

11 weeks from time that Contractor receives Notice to Proceed **\$230,000**

Phase 2: Validation

- a. Manual validation of Quantifiler Duo and Yfiler: 14 weeks from when Contractor can enter the lab to begin manual validations of Quantifiler Duo and Yfiler

Requirement: Contractor to be able to begin laboratory work within 5 weeks of receiving Notice to Proceed

Requirement: DNA Technical Leader approves experimental plan prior to arrival on site. **0**

- b. Robotic validations – 13 weeks from conclusion of 2a
Requirement: DNA Technical Leader approves experimental plan prior to arrival on site to initiate robotic validation.

Phase 3: Training 1 – Teachback sessions (2) for manual processes of Quantifiler Duo and Yfiler

Completed training of 10 staff members **0**
8 weeks from completion of Phase 2a

Requirement of 5 Analysts to be available for each of the (2) scheduled sessions on Quantifiler Duo and Yfiler processes

Requirement that DNA Technical Leader will have reviewed and approved Quantifiler Duo and Yfiler validation reports within 14 days of delivery of reports.

Phase 4: Training 2 – Teachback sessions (2) on Robotic Processes

Completed training of 10 staff members **0**
6 weeks from completion of Phase 2b

Requirement that DNA Technical Leader will have reviewed and approved Robotic validation reports within 14 days of delivery of reports.

Requirement that 5 Analysts be available for each of the (2) training sessions on Robotic processes.

\$ 67,300.00

\$ 297,300.00

Plus Extended Three-Year Service Warranty:

+ \$ 55,137.60

Total costs:

\$ 352,437.60

EXHIBIT "C"

EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.

2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.

6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "D"

DRUG POLICY COMPLIANCE AGREEMENT

I, Dolly Singh Sr Contracts Specialist as an ^{employee} ~~owner or officer~~ of
 (Name) (Print/Type) (Title)
Applied Biosystems, LLC (Contractor)
 (Name of Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Consultants (Executive Order No. 1-31), provided Contractor shall not be required to conduct post-accident testing if the accident does not give rise to a reasonable suspicion of drug/banned substances use or otherwise violate California law.
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

8/5/10
 Date

Applied Biosystems LLC
 Contractor Name
Dolly Singh
 Signature
Sr. Contracts Specialist
 Title

EXHIBIT "E"
DRUG POLICY COMPLIANCE DECLARATION

I, Polly Singh Sr. Contracts Specialist as an ^{employee} ~~owner or officer~~ of Applied Biosystems LLC (Contractor)
(Name) (Print/Type) (Title) (Name of Company)

have personal knowledge and full authority to make the following declarations:
 This reporting period covers the preceding 6 months from _____ to _____, 20____.

PS
 Initials A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy) but does not require Contractor to conduct post-accident testing if the accident does not give rise to a reasonable suspicion of drug/banned substances use or otherwise violate California law.

PS
 Initials Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures, noting that Contractor is not required to conduct post-accident testing if the accident does not give rise to a reasonable suspicion of drug/banned substances use or otherwise violate California law.

PS
 Initials Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

PS
 Initials Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is _____.

PS
 Initials From _____ to _____ the following test has occurred
(Start date) (End date)

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

PS
 Initials Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

PS
 Initials I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

Please see attached Life Tech's Drug Policy
 I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

8/5/10
 (Date)

Polly Singh
 (Typed or Printed Name)
[Signature]
 (Signature)
Sr. Contracts Specialist
 (Title)

EXHIBIT "G"
PROJECT SCHEDULE

September 1, 2010:	Notice to Proceed
November 10, 2010:	Completion of Phase 1: Delivery and Installation of Instrumentation
December 31, 2010:	Completion of Phase 2a: Manual Validation of Quantifiler Duo and Yfiler
March 25, 2011:	Completion of Phase 2b: Robotic Validations
February 11, 2010 2011 ^{PS} :	Completion of Phase 3: Training of 10 Staff members on Manual Quantifiler Duo and Yfiler processes (2 training sessions of 5 analysts each)
April 29, 2011:	Completion of Phase 4: Training of 10 Staff members on robotic processes (2 training sessions of 5 analysts each)

EXHIBIT "H"

Document 00460
(Form POP-1A)



**City of Houston
Pay or Play Program
Acknowledgement Form**

What this form does. This form acknowledges your awareness of the Pay or Play program. Your signature affirms that you will comply with the requirements of the program if you are the successful bidder/proposer, and ensure the same on behalf of subcontracts subject to the Pay or Play Program.

For more information, contact the Contract Administrator.

Routing: Return this form with your bid or proposal.

I declare under penalty of perjury under the laws of the State of Texas that if awarded a contract, I will comply with the requirements of the Pay or Play Program.

Don S
Signature

8/5/10
Date

Billu Singh
Print Name

3-20393-5692-1
City Vendor ID

Applied Biosystems, LLC
Company Name

760-603-7200
Phone Number

bids@appliedbiosystems.com
Email Address

Contractor Name: Applied Biosystems, LLC \$ _____
 (Contractor/Subcontractor) (Amount of Contract)

Contractor Address: 850 Lincoln Centre Drive, Foster City, CA 94404

Project No.: [GFS/CIP/AIP/File No.] # 537-T23061

Project Name: [Legal Project Name] Purchase Implementation, Validation of Automated Robotics for DNA in Houston Police Dept. Crime Lab

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534, Contractor agrees to abide by the terms of this Program. This certification is required of all Contractors for Contracts subject to the program. You must agree EITHER to PAY or to PLAY for each covered employee, including those of subcontractors subject to the program.

Yes No Contractor agrees to Pay \$1.00 per hour for work performed by covered employees, including covered subcontractors' employees, under the Contract with the City.

Yes No Contractor agrees to offer health benefits to each covered employee, including covered subcontractors' employees that meet or exceed the following criteria:
 (1) the employer will contribute no less than \$150 per employee per month toward the total premium cost; and
 (2) the employee contribution, if any amount, will be no greater than 50% of the total premium cost.

Yes No Contractor agrees to pay of behalf of some covered employees and play on behalf of other covered employees, in accordance with program requirements, including subcontractors' employees, if applicable.

Yes No Contractor will comply with all provisions of the Pay or Play Program and will furnish all information and reports requested to determine compliance with program provisions.

Yes No For Prime Contractors Only: Contractor will file compliance reports with the City, which will include activity for subcontractors subject to the program, in the form and to the extent requested by the administering department or the Affirmative Action and Contract Compliance Office. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

Following information is Mandatory	Prime Contractor	Subcontractor
Total No. of Employees on City Job	4	
No. Of Employees - "Playing"	4	
No. Of Employees - "Paying"	0	
No. Of Employees "Exempt"	0	

I hereby certify that the above information is true and correct.

M. E. Holman
 CONTRACTOR (Signature)

5/19/10
 DATE

Head of Global Comp, Benefits + HRIS
 NAME AND TITLE (Print or Type)