

AN ORDINANCE 2017-05-04-0289

**AMENDING THE EXISTING CONTRACT WITH BIO-RAD LABORATORIES TO PROVIDE HUMAN IMMUNODEFICIENCY VIRUS (HIV) LABORATORY TESTING SUPPLIES AND RENTAL OF THE BIOPLEX 2200 TESTING PLATFORM FOR THE SAN ANTONIO METRO HEALTH DISTRICT, AND EXTENDING THE CURRENT CONTRACT TO DECEMBER 31, 2021.**

\* \* \* \* \*

**WHEREAS**, the City of San Antonio and Bio-Rad Laboratories entered into a contract for Human Immune Virus (HIV) laboratory testing supplies for the San Antonio Metro Health District; and

**WHEREAS**, the contract, approved by Ordinance No. 2015-12-17-1057, was for a term beginning January 1, 2016 and ending September 30, 2018; and

**WHEREAS**, an amendment to the existing contract with Bio-Rad Laboratories is required to allow the City to enter into a reagent-rental agreement to obtain Bio-Rad Laboratories proprietary analytical testing instrumentation that can only be used with Bio-Rad Laboratories assay test kits; and

**WHEREAS**, the City wishes to extend the contract through December 31, 2021, making it coterminous with the agreement for rental of the BioPlex 2200 instrumentation; and

**WHEREAS**, the Texas Local Government Code indicates that competitive bidding is not required under section 252.022(a)(7)(A), which provides for any items that are available only from a sole source of supply; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

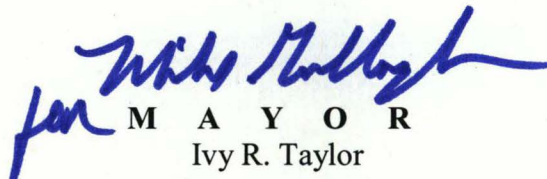
**SECTION 1.** The City Manager, the Deputy Chief Financial Officer, and their designees, are hereby authorized to execute an amendment to the contract with Bio-Rad Laboratories providing for the acquisition of proprietary analytical testing instrumentation and extending the contract termination date to December 31, 2021. A copy of the amendment is attached hereto and incorporated herein for all purposes as **Exhibit I**.

**SECTION 2.** Funding in the amount of \$7,000 for this ordinance is available for Fund 11001000, Cost Center 3619010004 and General Ledger 5304040, as part of the Fiscal Year 2017 Budget. Additional funding for this ordinance is contingent upon City Council approval of the City's operating budget and the availability of funds for subsequent Fiscal Years. Payment not to exceed the budgeted amount is authorized to Bio-Rad Laboratories and should be encumbered with a purchase order.

**SECTION 3.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 4.** This ordinance is effective immediately upon passage by eight or more affirmative votes; otherwise, it is effective on the tenth day after passage.

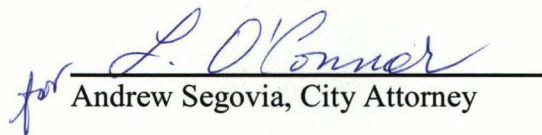
**PASSED and APPROVED** this 4<sup>th</sup> day of May, 2017.

  
M A Y O R  
Ivy R. Taylor

**ATTEST:**

  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
for Andrew Segovia, City Attorney



<b>Agenda Item:</b>	<b>4 ( in consent vote: 4, 5, 6, 7A, 7B, 7C, 8, 12, 15 )</b>						
<b>Date:</b>	05/04/2017						
<b>Time:</b>	09:34:32 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance amending the existing contract with Bio-Rad Laboratories to provide Human Immunodeficiency Virus (HIV) laboratory testing supplies and rental of the BioPlex 2200 testing platform for the San Antonio Metro Health District, and extending the current contract to December 31, 2021. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Deputy Chief Financial Officer, Finance]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				



## City of San Antonio

CONTRACT NAME:	Annual Contract For HIV Tests and Supplies
CONTRACT NUMBER:	RFO No. 6100006606
VENDOR NAME:	Bio-Rad Laboratories, Inc.
VENDOR ADDRESS:	6565 185 <sup>th</sup> Ave. NE, Redmond, WA 98052
ATTN:	Janette J. Stockert
AMENDMENT NUMBER:	2
EFFECTIVE DATE OF AMENDMENT:	Date of Ordinance Approving Amendment

The City of San Antonio and the vendor identified above hereby agree to amend the contract identified above, as follows. This amendment is authorized pursuant to the section entitled "Amendments" in 006, General Terms & Conditions of the above referenced contract.

### I. AMENDMENTS

A. Section 004-Specifications/Scope of Services is hereby amended by adding the following to the Product Specifications table:

ITEM 23	Syphilis IgG Reagent Kit	665-1450
ITEM 24	HIV Ab-Ag Reagent Pack	665-3455

B. The following is hereby **added** to Section 009-Attachment A, Price Schedule:

ITEM 23	Syphilis IgG Reagent Kit		
	Description	Est. Annual Quantity	Unit Price (Per Kit)
	Manufacturer: Bio-Rad P/N: 665-1450	212	\$349.28
			Extended Price (Quantity x Unit Price) \$74,047.36

ITEM 24	HIV Ag-Ab Screen		
	Description	Est. Annual Quantity	Unit Price (Per Kit)
	Manufacturer: Bio-Rad P/N: 665-3455	88	\$743.36
			Extended Price (Quantity x Unit Price) \$65,415.68



\*Parties acknowledge that the estimated quantities provided for Items 23 and 24 include quantities that the City will purchase directly from Vendor, but also include quantities expected to be purchased by the State of Texas acting on behalf of the City. While City anticipates using these quantities, City does not expect to directly purchase the full quantity stated directly from Vendor and shall not be obligated to provide an accounting showing that City has obtained these quantities from the State of Texas, or that the State of Texas has in fact, ordered these quantities.

C. City agrees to allow one price increase for each item listed in the Price Schedule, with the exception of items 23 and 24. The City agrees to allow two price increases for items 23 and 24. An increase cannot exceed 3% for any item. Vendor must provide 60 days advance written notice of the requested price increase, the effective date for the increase, the item(s) to which it applies, and the amount of the price increase. No price increase shall be effective prior to October 1, 2018. Vendor may issue subsequent requests for price increases for items for which no increase has yet been requested. City may delete items from the contract if City chooses not to accept the requested price increase.

D. Section 005-Supplemental Terms & Conditions, Original Contract Term, is hereby revised to read as follows:

Original Contract Term. This contract shall begin upon the effective date of the ordinance awarding the contract, or January 1, 2016, whichever is later. This contract shall terminate on December 31, 2021.

E. Section 004-Specifications/Scope of Services is hereby amended by adding the following BioPlex®2200 System Reagent Rental Agreement Plan:

BioPlex® 2200 System Reagent Rental Agreement Plan.

1. EQUIPMENT

1.1 City is moving its existing lab to a new location in San Antonio, Texas in approximately May of 2017. At such time, and on a date mutually agreed to between City and Vendor, City shall receive for use the following item(s) of equipment (all of the items collectively referred to as the "Equipment"):

Cat. #	Description	Quantity
660-0000RM	BIOPLEX 2200 System (Refurb)	1
660-0213	HP Printer	1
660-0517	UPS Backup System	1

1.2 During the duration of this Agreement, the City shall use the Equipment in accordance with the terms of this Agreement and only at the offices of the San Antonio Metro Health District and shall not remove or transfer it without the prior written consent of Vendor.

2. RENTALCHARGES

2.1 Provided City and/or the State of Texas order the minimum quarterly volume of kits shown in the table below, there shall be no charge for the rental of the Equipment. City shall not be responsible for meeting the quarterly minimum requirement until the expiration of the first quarter after



City's acceptance of the Equipment in working order. City is not required to prove that orders made by the State of Texas are done so on City's behalf in order for those orders to qualify to meet the requirements under this provision, and Vendor shall provide copies of records of all State of Texas orders at City's request. Should the minimum quarterly requirement stated below not be met by the cumulative orders placed by City and the State of Texas, Vendor's sole remedy is to remove the equipment, with 90 days' advance written notice to City and an opportunity to cure. These usage requirements cover rental of the instrument, service, and reagent costs at volumes established at the initiation of Agreement.

Catalog #	Description	Minimum Kits Per Quarter	Price/Kit or Pack
665-1450	Syphilis IgG Reagent Kit	53	\$349.28
665-3455	HIV Ab-Ag Reagent Pack	22	\$743.36

- 2.2 City may order as needed the following bulk consumables. These items will be invoiced at the time of delivery with the freight to be paid by Vendor. (Note: An estimated annual usage volume is included.)

Catalog#	Description	Estimated Annual Usage	Price
660-2003	Reaction vessel (1000)	38	No Charge
660-0820	Bio-Hazard Waste Bag (14x19)	42	No Charge
660-0817	Instrument sheath fluid (box of 2)	19	No Charge
660-0818	Instrument wash buffer	37	No Charge
666-0001	Instrument detector calibration pack	7	No Charge
666-0002	Instrument detector clean pack	7	No Charge
666-0003	Instrument probe cleaning solution	7	No Charge
660-0578	Sodium Hydroxide, 1.0 N (1 Liter)	1	No Charge
663-1400	Syphilis IgG Calibration set (1x4 vials)	7	No Charge
663-1430	Syphilis IgG Controls Set (1x6 vials)	7	No Charge
663-3405	HIV Ag-Ab Calibrator Set (1x6 vials)	4	No Charge
663-3435	HIV Ag-Ab Control Set (1 x4 vials)	2	No Charge

- 2.3 Vendor, at its sole discretion, may choose to 1) sell, or offer at no-charge, specimen panels to City for the purpose of assisting City in the evaluation of new assays or 2) may refer City to a third-party vendor for City to make its own arrangements to purchase the specimen panels for the evaluation of new assays.

- 2.4 The LIS interface costs of up to \$10,000.00 will be paid by Vendor to LIS interface vendor. City will provide Vendor with a copy of the quote from the LIS interface vendor. Vendor will issue a Purchase Order and payment to LIS interface vendor directly. If City cancels this Agreement before the expiration of the Term, City will reimburse Vendor a pro-rata share of the LIS interface costs.

### 3. REAGENT SHIPMENTS

City, or the State of Texas acting on City's behalf, will order the minimum amount of Reagent Kits outlined in Section 2.1 during the course of this Reagent Rental agreement. City is under no



obligation to demonstrate that State of Texas orders are placed on City's behalf and any orders by the State of Texas count toward the minimum quantity requirements stated in Section 2.1. Reagents ordered by City will be billed to City when shipped. Payment terms of RFO No. 6100006606 apply. Vendor shall bill the State of Texas for Reagents ordered by the State of Texas. The Reagents will be shipped at no charge to City.

#### 4. CARE AND SERVICING OF THE EQUIPMENT

- 4.1 At no additional cost to City, Vendor will provide telephone assistance 24 hours per day, 365 days per year.
- 4.2 As part of this Agreement, Vendor or Vendor appointed personnel will provide on-site service, as needed, to keep the Equipment in good working order. On-site service will be provided, at no cost to City, Monday through Friday, 8:00 a.m. to 6:00 p.m. (local time), excluding national holidays. On-site extended service coverage (Saturday, Sunday, and/or holidays) is available, but is not included in this Agreement. Vendor's Signature Service Agreement Rate Schedule for "Extended Reagent Rental Service Coverage" charges is available upon request.
- 4.3 Vendor will not be required to pay the cost of any damage to the Equipment caused by City's negligence, abuse, or alteration of the Equipment, or by any service performed by unauthorized personnel or by use of any non-vendor approved reagents, calibrators or disposables.
- 4.4 City agrees that only Vendor appointed personnel are to service the Equipment.
- 4.5 City agrees to utilize only Vendor approved reagents, calibrators, and disposables on the Equipment.
- 4.6 Vendor shall not be responsible for the moving (de-installation and re-installation) of equipment from one location to another, additional operator training, and/or any other extra services not specified in this Agreement.
- 4.7 City agrees to provide Vendor with an internet connection to each instrument to facilitate remote troubleshooting, problem diagnosis and possible resolution without dispatch of a Vendor Engineer. City acknowledges that Bio-Rad is not a Business Associate, City is prohibited from disclosing PHI to Bio-Rad, and City is solely responsible for safeguarding any PHI that is accessible to Bio-Rad.

#### 5. TITLE TO THE EQUIPMENT

- 5.1 Vendor is the owner of and retains title to the Equipment.
- 5.2 City shall not permit or suffer any attachment, encumbrance, lien, or security interest to be filed against the Equipment and shall promptly notify Vendor if any of the foregoing is filed or claimed.
- 5.3 Upon the request of Vendor, City will execute a financing statement as provided under the Uniform Commercial Code to permit Vendor to perfect a security interest in the Equipment.

#### 6. RISK OF LOSS & DAMAGE

6.1 Vendor will be responsible for any damage to the Equipment not caused by City's negligence, abuse, or alteration of the Equipment, or by any service performed by unauthorized personnel or by use of any non-vendor approved reagents, calibrators or disposables. City shall promptly notify Vendor of any damage to equipment described herein.

6.2 If City is liable for damage, and if the damaged items are not repairable, City shall pay Vendor the current catalog trade price for the item of the Equipment less depreciation based on a ten (10) year straight line base (prorated monthly). There upon City will own that item "as is" with all faults and defects.

6.3 City is self-insured and will agree to insure said piece of equipment against loss, fire, theft, etc. City will provide a letter from City's Office of Risk Management describing City's self-insured status, if requested.

7. LABEL

City shall not remove any labels, symbols or serial numbers that are or maybe affixed to the items of Equipment being utilized hereunder, except as requested by Vendor in writing.

8. TAXES

The City of San Antonio is exempt from payment of federal taxes, and State of Texas limited sales and use taxes. Vendor must not include such taxes in offer prices. An exemption certificate will be signed by City where applicable upon request by Vendor. Vendor is the owner of and retains title to the Equipment and responsibility for any applicable property taxes provided City forwards such property tax notification, if received by City from the applicable taxing authority, to: CDG Global Finance Department, Bio-Rad Laboratories, Inc., 4000 Alfred Nobel Drive, Hercules, CA 94547.

9. TRANSPORTATION

Transportation charges to (and where applicable from) the place of business of City for the Equipment shall be borne by Vendor and for the Reagents and consumables shall be borne by Vendor.

10. TRAINING

For each BioPlex2200, Vendor will provide one-time training, at no additional charge, for two of City's Technologists at Vendor's Benicia, California facility (includes airfare and associated fees such as baggage fees, transportation services upon arrival, lodging, and meals, which shall be arranged by Vendor according to its corporate travel policies). Vendor facility training slots must be utilized within 12 months of system installation. City agrees to not report results for clinical use until at least one primary operator has attended formal in-house training. Training at City site is available outside the terms of this agreement on an as needed basis to be billed at the prevailing rate which currently is \$750.00 per 4 hour minimum block.

11. LANDLORD'S WAIVER

City shall furnish upon request a waiver signed by City's landlord, if at any time the Equipment is housed in a building not owned by City, by which the landlord waives all rights to seize, possess or withhold any item of the Equipment by reason of the City's failure to pay its rent to the landlord.



## 12. FORCE MAJEURE

Neither Vendor nor City shall be liable for any failure to perform under this Reagent Rental Agreement Plan due to strikes (legal or illegal), lockouts, fires, floods or water damage, riots, governmental acts or orders, interruption of transportation, or any other Acts of God.

## 13. TERM

This BioPlex® 2200 System Reagent Rental Agreement will begin when the Equipment is installed and will continue in effect as provided in Section 005-Supplemental Terms and Conditions of RFO No. 6100006606, as amended herein. The BioPlex® 2200 System Reagent Rental Agreement added by this contract amendment will terminate automatically on the date as of which City in any manner acquires title to the Equipment. In addition, Vendor may immediately terminate this BioPlex® 2200 System Reagent Rental Agreement in the event (a) City fails to make payment when due, as described in subparagraph 15.2, (b) materially breaches this Agreement (other than non-payment) and fails to cure such breach with thirty(30)days of notice by Vendor of such breach, or (c) City makes an assignment for the benefit of creditors or proceedings are commenced by or for City under any bankruptcy, insolvency, or debtor's relief law. Vendor may also immediately terminate the License, as defined in paragraph 18, in the event City breaches the License.

## 14. RETURN OF EQUIPMENT

Upon termination of this Agreement, for any reason, except taking title to the Equipment, a Vendor Service Engineer will carefully pack and return the Equipment to Vendor, at Vendor's sole cost and expense.

## 15. WAIVER

15.1 City agrees that this Agreement is only an agreement of use with respect to the Equipment, that City does not in any way acquire title to or the ownership of the Equipment or any item thereof except under paragraph 6, that upon termination or cancellation of this Agreement for whatever reason, City shall immediately permit its removal under paragraph 14, that City's sole right hereunder is to peaceably possess and use the Equipment provided it makes all payments when and as due.

15.2 In the event City fails to make payment required hereunder when such payment become due, Vendor may, in its discretion and without further liability whatever, terminate this Agreement and enter upon City's facility and remove the Equipment, with prior notice to City. City waives pre-seizure hearing and judicial process as prior conditions to repossession of the Equipment or any item thereof.

## 16. NOTICES

To Vendor:

Bio-Rad Laboratories, Inc.  
6565 185th Avenue NE Redmond, WA 98052  
Attention: Contract Administration

With a copy to:  
Bio-Rad Laboratories, Inc.  
1000 Alfred Nobel Drive  
Hercules, CA 94547

Finance Department, Purchasing Division  
PO Box 839966 • San Antonio, TX 78283-3966 • Tel: 210-207-7260

Attention: General Counsel

To City: San Antonio Metro Health District  
332 W Commerce Street  
San Antonio, TX 78205  
Attention: Mark Wade

17. CERTIFICATION

City certifies that prior to the execution of this Agreement, Vendor offered to sell reagent test kits to City, and/or to lease or sell the Equipment to City, separately, and that City has refused those offers, and has bound itself to the terms of this Agreement instead.

18. END-USER SOFTWARE LICENSE

18.1 LICENSE: Vendor hereby grants City a non-exclusive, non-transferable license to use all software now or hereafter installed by Vendor on the BioPlex 2200 System as delivered, including updates and new releases (the "Software") in object code only for your own internal purposes, as provided for under the terms of this Agreement.

18.2 TITLE: City agrees that the Software, including all enhancements, improvements, copies thereof, and all intellectual property contained therein, is proprietary to Vendor, and that the furnishing thereof does not in any way constitute the grant or waiver of its proprietary interest or rights therein. Vendor reserves all rights not expressly granted herein.

18.3 LIMITATIONSON USE: City shall not:(1) sell, license, lease, lend, loan, or otherwise transfer possession of the Software or any of the physical media containing the Software to any person or entity; or (2) permit the Software to be accessed remotely, via modem or via other means, unless expressly approved in writing by Vendor; or (3)copy, reformat, rearrange, excerpt or modify, disassemble, decompile, or otherwise reverse engineer all or any part of the Software for any purpose; or (4) download onto, copy onto or use the Software on more than one personal computer or access device at any given time.

18.4 TERMINATION OF LICENSE: This BioPlex® 2200 System Reagent Rental Agreement and the license granted herein shall continue until terminated as described in this subparagraph. If City breaches the License, Vendor shall have the right to terminate this License immediately in which case City shall immediately return the Software and any derivative works and shall destroy all copies of the Software and any derivative works which City still has in its possession.

19. LIMITED WARRANTY

19.1 Vendor warrants and represents that the Equipment will perform in accordance with Vendor's standard warranty. The warranty period begins on City's Acceptance date and remains in effect for one year.

19.2 EXCEPTFOR THE EXPRESS WARRANTY STATED IN THIS PARAGRAPH, VENDOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE EQUIPMENT OR THE SOFTWARE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.



20. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL VENDOR BE LIABLE TO THE CITY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, LOSS OR INACCURACY OF DATA, LOST REVENUES OR PROFITS OR INJURY TO THIRD PERSONS, WHETHER FORESEEABLE OR NOT, REGARDLESS OF WHETHER VENDOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. This limitation on liability pertains solely to the BioPlex® 2200 System Reagent Rental Agreement Plan, and not to any other agreement or portion thereof, between City and Vendor.

II. PROVISIONS REMAIN IN EFFECT

All other terms, conditions, covenants and provisions of the above referenced contract, as previously amended, not specifically mentioned herein and revised by this document, are retained in their entirety, unchanged, and remain in full force in effect for the duration of said contract, and any renewals thereof.

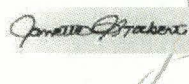
III. ENTIRE AGREEMENT

This contract, as amended, embodies the complete agreement of the parties hereto with regard to the subject matter contained herein, superseding all oral or written previous and contemporary agreements between the parties relating to matters herein.

**EXECUTED** and **AGREED** to as of the dates indicated below.

**CITY OF SAN ANTONIO**

**VENDOR**

  
Digitally signed by Janette Stockert  
DN: dc=com, dc=Bio-Rad, dc=Global,  
ou=North America, ou=CDG,  
ou=Washington, ou=Redmond,  
o=Users, ou=Standard Users,  
cn=Janette Stockert  
Date: 2017.04.10 10:25:15 -0700

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Printed Name: Janette J. Stockert  
Title: Contract Administration Supervisor  
Government Contracts / Paralegal  
Date: April 10, 2017

Please return this amendment to the Finance Department, Purchasing Division at the address below, or hand deliver to 111 Soledad, 5<sup>th</sup> Floor, San Antonio, TX 78205.