

**FOURTH AMENDMENT TO
RFO 6100000466
ANNUAL CONTRACT FOR MAGNA SERVICE AGREEMENT**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This fourth amendment to RFO 6100000466 - Annual Contract For Magna Service Agreement is entered into by and between the City of San Antonio ("City"), a home rule municipal corporation, and Roche Diagnostics Corporation ("Roche"), referred to collectively herein as the "Parties", pursuant to Ordinance No. 2019 - ____ - ____ - ____.

WHEREAS, in 2011, City and Roche entered into an agreement entitled "RFO 6100000466 - Annual Contract For Magna Service Agreement" (hereafter "Original Contract"), under which the Parties set forth their agreement for Roche to provide unlimited onsite emergency service, technical support and preventive maintenance for City's MagNa Pure instruments for the San Antonio Metropolitan Health District Laboratory; and

WHEREAS, as amended, and pursuant to ordinance 2016-04-28-0296, the contract expires on April 30, 2019; and

WHEREAS, the Parties now wish to extend the contract through April 30, 2022, with the option for the City to renew for two, additional one-year periods; and

NOW, IN ACCORDANCE THEREWITH, the Parties agree as follows:

I. AMENDMENTS

- 1.01** Contract Term. The Original Contract, as previously amended, is hereby extended for a period beginning May 1, 2019 and ending April 30, 2022.

Renewals. At City's option, this contract may be renewed under the same terms and conditions for two (2), additional one (1) year periods. Renewals shall be in writing and signed by Director, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funding therefor.

- 1.02** Section 003, Instructions for Offerors, is hereby amended to delete the section titled "Conflict of Interest" in its entirety and to add the following two sections:

State of Texas Conflict of Interest Questionnaire (Form CIQ). Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed Form CIQ with the City Clerk if those persons meet the requirements under 176.006(a) of the statute.

By law this questionnaire must be filed with the City Clerk not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Texas Local Government Code.

Form CIQ is available from the Texas Ethics Commission by accessing the following web address:

<http://www.sanantonio.gov/Ethics/ForCompliance/Vendors-And-Conflict-of-Interest-Reports>

In addition, please complete the City's Addendum to Form CIQ (Form CIQ-A) and submit it with Form CIQ to the Office of the City Clerk. The Form CIQ-A can be found at:

<http://www.sanantonio.gov/atty/ethics/pdf/OCC-CIQ-Addendum.pdf>

When completed, the CIQ Form and the CIQ-A Form should be submitted together, either by mail or hand delivery, to the Office of the City Clerk. If mailing, mail to:

Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966.

If delivering by hand, deliver to:

Office of the City Clerk c/o Municipal Records Facility, 719 S. Santa Rosa, San Antonio, TX 78204.

Certificate of Interested Parties (Form 1295). The Texas Government Code §2252.908, and the rules issued by the Texas Ethics Commission found in Title 1, Sections 46.1, 46.3 and 46.5 of the Texas Administrative Code, require a business entity to submit a completed Form 1295 to the City before the City may enter into a contract with that business entity.

Form 1295 must be completed online. It is available from the Texas Ethics Commission by accessing the following web address:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

Print and sign your completed Form 1295. Submit your signed Form 1295 with this Amendment. Where requested to provide the name of the public entity with whom you are contracting, insert "City of San Antonio". Where requested to provide the contract number, provide the solicitation number shown in the title of this Amendment (e.g. IFB 6100001234, RFO 6100001234 or RFCSP 6100001234).

The following definitions found in the statute and Texas Ethics Commission rules may be helpful in completing Form 1295.

"Business entity" includes an entity through which business is conducted with a governmental entity or state agency, regardless of whether the entity is a for-profit or nonprofit entity. The term does not include a governmental entity or state agency. (NOTE: The City of San Antonio should never be listed as the "Business entity".)

"Controlling interest" means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business

entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. Subsection (3) of this section does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.

“Interested party” means: (1) a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts; or (2) an intermediary.

“Intermediary,” for purposes of this rule, means a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

- (1) receives compensation from the business entity for the person’s participation;
- (2) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
- (3) is not an employee of the business entity or of an entity with a controlling interest in the business entity.

Publicly traded business entities, including their wholly owned subsidiaries, are exempt from this requirement and are not required to submit Form 1295.

1.03 Section 005, Supplemental Terms & Conditions, is hereby amended to add the following:

Temporary Short Term Extensions. City shall have the right to extend this contract under the same terms and conditions beyond the original term or any renewal thereof, on a month to month basis, not to exceed three months. Said month to month extensions shall be in writing, signed by Director, and shall not require City Council approval, subject to and contingent upon appropriation of funding therefore.

Suspension and Debarment Contract Clause. This contract is a covered transaction for purposes of 2 CFR Part 200. As such, the contractor is required to verify that neither the contractor, nor its principals, as defined at 2 CFR 180.995, are excluded or disqualified as defined at 2 CFR 180.940 and 2 CFR 180.935, respectively.

By signing this Amendment, Contractor certifies that:

- Neither it nor its principals are presently debarred, suspended for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program;
- Contractor shall provide immediate written notice to City if, at any time during the term of this contract, including any renewals hereof, Contractor learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements of 2 CFR Part 200 throughout the term of the contract and

any renewals. Contractor agrees to include a provision requiring such compliance in its lower tier covered transactions.

Procurement of Recovered Materials Contract Clause. Contractor and its subcontractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

- 1.04** Section 006, General Terms & Conditions, Termination, is hereby amended to add the following at the end of the section:

City shall pay Contractor for conforming goods delivered and services provided prior to the date of termination, offset by any amounts due and owing from Vendor to City.

- 1.05** Section 006, General Terms & Conditions, is hereby amended to add the following new sections:

City's Non-Discrimination Policy. As a party to this contract, Vendor understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

Attorney's Fees. The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

Prohibition on Contracts with Companies Boycotting Israel. Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization Prohibited. Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Vendor hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Vendor's certification. If found to be false, or if Vendor is identified on such list during the course of its contract with City, City may terminate the Contract for material breach.

- 1.06 Section 009, Attachments, Price Schedule, is hereby amended to delete the table in its entirety and add the following:

Estimated Quantity	Description	Annual Price
1 Each	MagNA Pure Compact (Serial #MPCB0945)	\$ 2,960.00
1 Each	MagNA Pure LC 2.0 (Serial #LC2C00000314)	\$ 6,760.00
	Total	\$ 9,720.00

City reserves the right to add or remove items from the list due to instrument changes or replacements. For such deletions, Vendor shall prorate and refund to City the unused and remaining Annual Price paid.

II. PROVISIONS REMAIN IN EFFECT

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

III. ENTIRE AGREEMENT

This agreement, 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

Roche Diagnostics Corporation

(Signature)

(Signature)

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Shaton Edwards

Manager, Contracting

5/9/19

Roche Diagnostics has signed this Agreement first on **5/9/19** and this Agreement shall be effective upon Roche Diagnostic's receipt of executed documents and acknowledgement by an Authorized Roche Diagnostics Representative in Indianapolis, Indiana.

Customer Changes to this Agreement after Roche Diagnostics Corporation signature are void.

Approved as to Form:

Assistant City Attorney