

ORDINANCE 2019-12-12-1065

**AUTHORIZING A PROFESSIONAL SERVICES CONTRACT WITH ALCOHOL AND DRUG TESTS, INC., TO PROVIDE THE SAN ANTONIO POLICE DEPARTMENT WITH RANDOM AND REASONABLE SUSPICION DRUG TESTING AND POST ACCIDENT TESTING SERVICES FOR A THREE YEAR TERM BEGINNING JANUARY 1, 2020 AND ENDING DECEMBER 31, 2022, WITH TWO ONE YEAR RENEWAL OPTIONS IN AN AMOUNT NOT TO EXCEED \$240,000.00.**

\* \* \* \* \*

**WHEREAS**, the City issued a Request for Proposals to provide drug testing services for the San Antonio Police Department; and

**WHEREAS**, a formal committee evaluation was conducted; and

**WHEREAS**, City staff now recommends Alcohol and Drug Tests, Inc. be awarded the contract; and

**WHEREAS**, said agreement provides for an initial three year term, beginning January 1, 2020 through December 31, 2022 with two (2) additional, one (1) year options to renew; and

**WHEREAS**, the total estimated cost of this contract is \$240,000.00; **NOW THEREFORE:**

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

**SECTION 1.** The City Manager or designee is hereby authorized to execute a Professional Services Contract with Alcohol and Drug Tests, Inc. for a period beginning January 1, 2020 to December 31, 2022, with the option for the City to extend the contract for two (2) one (1) year renewals. A copy of the Professional Services Agreement is attached as **Exhibit 1**.

**SECTION 2.** Funding in the amount of \$48,000.00 for this Ordinance is available in Fund 11001000, Cost Center 1701010006, and General Ledger 5201040 as part of the Fiscal Year 2020 budget.

**SECTION 3.** Additional funding in the amount of \$192,000.00 is contingent upon City Council approval of subsequent budgets within the term length of this contract.


**SECTION 4.** Payment not to exceed the budgeted amount is authorized to Alcohol and Drug Tests, Inc. (A & D Tests, Inc.) to provide the San Antonio Police Department (SAPD) with random and reasonable suspicion drug testing and post-accident testing for all Officers within SAPD.

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**SECTION 5.** The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund numbers as necessary to carry out the purpose of this Ordinance.

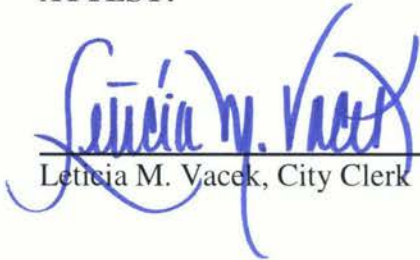
**SECTION 6.** This Ordinance becomes effective immediately if passed and approved by eight (8) affirmative votes; otherwise this Ordinance shall take effect ten (10) days from the date of passage.

**PASSED AND APPROVED this 12th day of December, 2019.**



**M A Y O R**  
Ron Nirenberg


**ATTEST:**



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Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**



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Andrew Segovia, City Attorney

<b>Agenda Item:</b>	39 ( in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18A, 18B, 18C, 18D, 18E, 19, 20, 21, 22, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 41A, 41B, 42A, 42B, 42C, 42D, 43, Z-1 )						
<b>Date:</b>	12/12/2019						
<b>Time:</b>	09:40:36 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	Ordinance approving a professional service contract with Alcohol and Drug Tests, Inc. to provide the San Antonio Police Department with random and reasonable suspicion drug testing and post-accident testing for a three year term beginning January 1, 2020, and ending December 31, 2022, with two one-year renewal options in an amount not to exceed \$240,000.00. Funding for this contract is available in the FY 2020 Police General Fund Budget with additional funding for future fiscal years subject to City Council appropriation. [María Villagómez, Deputy City Manager; William P. McManus, Chief of Police]						
<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>
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				x
Jada Andrews-Sullivan	District 2		x			x	
Rebecca Viagran	District 3		x				
Adriana Rocha Garcia	District 4		x				
Shirley Gonzales	District 5		x				
Melissa Cabello Havrda	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

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## **EXHIBIT 1**



**CONTRACT  
FOR  
RANDOM, REASONABLE SUSPICION, AND  
POST-ACCIDENT DRUG TESTING SERVICES**

This CONTRACT is entered into by and between the City of San Antonio (CITY) and A&D Tests, Inc. (CONSULTANT).

**WHEREAS**, CITY wishes to engage the services of a vendor to provide random, reasonable suspicion, and post-accident drug testing to the San Antonio Police Department (SAPD) for sworn members of the SAPD; and

**WHEREAS**, CONSULTANT is ready, willing, and able to provide said services; **NOW THEREFORE**:

**I. TERM**

- 1.1 This contract shall commence on January 1, 2020, and shall terminate on December 31, 2022, unless terminated earlier pursuant to the provisions hereof.
- 1.2 At the sole discretion of CITY, this contract may be extended, beyond its initial term, for as many as two one-year terms, upon funding approval for the fiscal year. All renewals shall be in writing and signed by the Director, or their designee, without further action by the San Antonio Council.
- 1.3 CONSULTANT and CITY recognize that the continuation of any contract after the close of any given fiscal year of CITY, which fiscal year ends on September 30, shall be subject to appropriation of funds for the contract. Should funds not be appropriated, this contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

**II. SCOPE OF SERVICES**

**A. Random Testing**

- 2A.1 CONSULTANT shall provide to CITY random drug testing of sworn members of the SAPD during the term of this contract, pursuant to the provisions set out below.
- 2A.2 CONSULTANT shall randomly select and test 25% of all active sworn officers during a calendar year based on the authorized manpower levels of the SAPD as of January 1<sup>st</sup> of each year. CONSULTANT shall use a computerized program certified as non-discriminatory to randomly select officers to be tested.
- 2A.3 CONSULTANT shall provide to the Mandatory Drug Testing Program Coordinator the specified number of requested random donors, who shall only be known to the CONSULTANT by a unique number, by the end of business on the day of the request.

2A.4 Random drug testing shall consist of a urinalysis.

#### **B. Reasonable Suspicion Testing**

2B.1 CONSULTANT shall provide to CITY reasonable suspicion drug testing of sworn members of the SAPD, at the request of CITY, during the term of this contract, pursuant to the provisions set out below.

2B.2 Reasonable suspicion drug testing shall consist of both a urinalysis and a breathalyzer test.

#### **C. Post-Accident Testing**

2C.1 CONSULTANT shall provide to CITY post-accident drug testing of sworn members of the SAPD, at the request of CITY, during the term of this contract, pursuant to the provisions set out below.

2C.2 Post-accident drug testing shall consist of both a urinalysis and a breathalyzer test.

#### **D. General**

2D.1 As requested by the CITY, every three months during the term of this Agreement, CONSULTANT will be available to meet with CITY representatives to discuss matters related to this Agreement.

2D.2 Urinalysis. A donor's urine sample shall be tested to determine the level of the substances specified below.

A. CONSULTANT shall store positive testing specimens collected for a period of one year or until all administrative or legal disputes have been resolved, which could be a number of years. CITY shall give CONSULTANT reasonable notice if administrative and legal disputes arise, in order that CONSULTANT may retain the specimen involved.

B. Pursuant to the provisions of the collective bargaining agreement in effect, CONSULTANT shall accompany a selected officer to a qualified physician's office or a certified testing laboratory to have the testing administered, at the request of the officer, at the officer's expense, within five hours after notification of an order for testing.

C. CONSULTANT shall allow an officer up to four hours to provide a specimen and document the circumstances surrounding any unwillingness, failure or inability to provide a specimen. If, after two hours, an officer has not provided a specimen, CONSULTANT shall contact CITY's Random Drug Testing Program Coordinator.



- D. CONSULTANT shall obtain a urine specimen through stricter observation where there is reason to believe, as determined by CONSULTANT and CITY, that an initial specimen has been altered or substituted.
- E. CONSULTANT shall notify the Mandatory Drug Testing Program Coordinator within five (5) business days of a new employee hired by CONSULTANT. CONSULTANT shall notify the Mandatory Drug testing Program Coordinator within twenty-four (24) hours of an employee termination. CONSULTANT shall return CITY issued badge of terminated employees within five (5) business days to the Mandatory Drug Testing Program Coordinator. CONSULTANT shall ensure that only employees who have not been arrested by Officers of the SAPD or have not been convicted of a felony or misdemeanor crime involving dishonest conduct or possession of illegal drugs be involved in the collection or handling of an unsealed sample collected from an Officer. Criminal background checks must be conducted on all employees prior to employment and annually post hire.
- F. CONSULTANT shall use a laboratory that is experienced and capable of quality control documentation, chain of custody documentation, demonstrated technical expertise, and proficiency in urinalysis, and shall comply with all requirements of the Substance Abuse Mental Health Services Administration (SAMHSA) and the College of American Pathologist Forensic Urine Drug Testing Program (CAP FUDTP).
- G. CONSULTANT shall ensure that both the initial and confirmation tests are performed at a SAMHSA/CAP FUDTP certified laboratory.
- H. CONSULTANT shall conduct an initial screening (5-panel) split sample urine test for the current classes of drugs listed under DOT Rule 49 CFR Part 40 Subpart F (<https://www.transportation.gov/odapc/part40/40-87>):
- I. The urine sample will be tested for the presence of any of the identified classes of prohibited drugs.
  - A. An initial non-negative test result will not be considered conclusive; rather, it will be classified as “pending confirmation.”
  - B. A non-negative test result on the initial drug-screening test will automatically require a confirmation drug test be performed.
- J. Should a confirmation test be appropriate as a result of a non-negative initial drug-screening test, the confirmatory test procedure will be technologically different and more sensitive than the initial drug screening test. CONSULTANT shall conduct a confirmation (5-panel) drug screening test on each drug test by the SAMHSA/CAP FUDTP certified laboratory selected to conduct the drug test (DOT Rule 49 CFR Part 40 Section 40.87)
- K. CONSULTANT shall provide a medical review officer.

- L. CONSULTANT shall expedite the collection of urine from on-duty officers and provide a separate private waiting area if collection is performed at a local laboratory.
- M. CONSULTANT shall provide data collection in accordance with state and federal regulations. At a minimum, data collected must include patient identifier, age, race, and assay results.
- N. CITY may amend the substances and levels tested for in both the initial and confirmation tests if required to do so by any collective bargaining agreement with the San Antonio Police Officers' Association that is effective during the term of this contract.

2D.3 Breathalyzer Test. A donor's breath sample shall be tested to determine alcohol level.

- A. CONSULTANT shall conduct a breathalyzer test as soon as practicable. If an officer refuses or delays the administration of the test, CONSULTANT shall contact CITY's Mandatory Drug Testing Program Coordinator.

2D.4 CONSULTANT shall be available to provide said random, reasonable suspicion, and post-accident drug testing at all times (24 hours per day, 365 days per year). CONSULTANT'S collector shall present himself at the location specified by the SAPD within one hour of notification to CONSULTANT.

2D.5 CONSULTANT shall ensure that only employees who have not been arrested by officers of the SAPD are used in the collecting and handling of an unsealed specimen or in conducting the breathalyzer test.

2D.6 CONSULTANT shall ensure that no employee is used in the collection or handling of an unsealed specimen or in conducting a breathalyzer test who has been convicted of a felony or misdemeanor crime involving dishonest conduct or possession of illegal drugs.

2D.7 CONSULTANT shall pick up orders for testing, issued by the Chief of Police, within two (2) business days of notification by the CITY.

2D.8 CONSULTANT shall complete, at a minimum, (50) orders a month. CONSULTANT agrees \$25.00 will be withheld for each order not completed below the fifty ((50)-order minimum for failure to meet this performance standard.

2D.9 CONSULTANT shall receive a set of orders monthly to be completed within three (3) months of issuance barring extenuating circumstances (e.g. donor is out for an undetermined period of time, such as injured or military leave). CONSULTANT shall document on the order form any failed attempts to collect from a donor. After second failed attempt, CONSULTANT shall notify the Mandatory Drug Testing Program Coordinator via text or email. CONSULTANT agrees for each order not completed within three (3) months of issuance and for which no documented extenuating



circumstance exists, \$25.00 for each order will be withheld for failure to meet this performance standard.

- 2D.10 CONSULTANT shall document and maintain all records in a confidential manner and forward all test results and documentation to the Office of the Chief of Police of the SAPD within the first five (5) business days each month.
- 2D.11 CONSULTANT shall deliver all data to the SAPD at the end of the contract, or if terminated earlier, pursuant to the terms contained herein.
- 2D.12 CONSULTANT shall keep individual laboratory and test results strictly confidential. CONSULTANT shall obtain CITY approval for any additional use of information collected pursuant to the terms of this contract.
- 2D.13 At any time during the term of this contract, should assigned personnel become unavailable so as to unfavorably impact administration of said contract, a competent replacement shall be provided immediately.
- 2D.14 Prior to discarding specimens at the end of the one year retention period, CONSULTANT shall notify CITY and obtain CITY approval to discard said specimens.
- 2D.15 CONSULTANT shall make available the medical review officer for attendance at or participation in any administrative hearing in which the testing conducted pursuant to this contract is at issue.

#### **E. Quality Assurance**

- 2E.1 Establish Quality Assurance procedures to ensure the accuracy and reliability of results for tests performed in connection with this proposed agreement.
- 2E.2 CONSULTANT shall receive prior approval from SAPD in writing to add subcontractors, or other services providers that will be hired by the CONSULTANT in relations to its Contract with SAPD.
- 2E.3 If at any time during the contract period, should the assigned personnel become unavailable or unfavorably impact administration of the program, CONSULTANT will provide a competent replacement immediately or not to exceed 24 hours.

#### **F. Confidentiality**

- 2F.1 CONSULTANT shall ensure the confidentiality of all information contained in medical records or their confidential source documents.
- 2F.2 CONSULTANT shall provide adequate internal control procedures to protect SAPD from financial loss, resulting from any aspect of administering this Contract.

### **G. Auditing**

- 2G.1 CONSULTANT shall allow CITY or its designee to audit all files maintained by the CONSULTANT, for the CITY without notice.

## **III. COMPENSATION TO CONSULTANT**

### **A. General**

- 3A.1 In consideration of CONSULTANT'S performance of the services set forth in this contract, CITY agrees to pay CONSULTANT an amount not to exceed \$48,000.00, annually, as evidenced by duly authorized invoices sent to CITY from CONSULTANT. CITY agrees to pay CONSULTANT'S invoices within thirty days of CITY'S receipt of invoice.
- 3A.2 CITY shall consider a change in fees if there is a substance and level change in the Collective Bargaining Agreement.
- 3A.3 CONSULTANT shall not be entitled to any travel expenses whatsoever, whether for the collection of urine, for the conducting of the initial test, the confirmatory test, or the re-test, for the conducting of the breathalyzer test, or for the participation of the medical review officer in administrative hearings.
- 3A.4 No fees, charges or premiums in any amount, in addition to the actual cost, to that specified in the approved contract shall be paid for any subcontractor services. Regardless of any CITY approval of a subcontract, CITY shall in no event be obligated to any third party, including any subcontractor of CONSULTANT for performance of work of service.
- 3A.5 CITY shall not be charged a fee for the medical review officer's attendance at or participation in any administrative hearing in which the testing conducted pursuant to this contract is at issue.

### **B. Random Testing**

- 3B.1 CONSULTANT shall be paid \$47.50 per 5-panel, on-site screening test for random drug testing. This fee shall include any required confirmatory test.
- 3B.2 CONSULTANT shall be paid \$25.00 per hour for each hour of waiting for a specimen to be provided by an officer in excess of two hours.

### **C. Reasonable Suspicion and Post-Accident Testing**

- 3C.1 CONSULTANT shall be paid \$47.50 per 5-panel, on-site screening test. This fee shall include any required confirmatory test.
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- 3C.2 CONSULTANT shall be paid \$25.00 per breathalyzer test for reasonable suspicion and post-accident drug testing.
- 3C.3 CONSULTANT shall be paid \$100.00 on call fee for reasonable suspicion and post-accident drug testing calls to which CONSULTANT is summoned.
- 3C.4 CONSULTANT shall be paid \$25.00 per hour for each hour of waiting for a specimen to be provided by an officer in excess of two hours.

#### **IV. LICENSES AND CERTIFICATIONS**

- 4.1 All licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials and all applicable state and federal laws and local ordinances must be complied with by CONSULTANT. Failure to comply with this requirement shall be treated as a default and will result in termination of this contract.

#### **V. CONFIDENTIAL WORK**

- 5.1 No reports, information, project evaluation, project designs, data, or any other documentation developed by, given to, prepared by, or assembled by CONSULTANT under this contract shall be disclosed or made available to any individual or organization by CONSULTANT without the express prior written approval of CITY.
- 5.2 CONSULTANT shall establish a method to secure the confidentiality of records and information that CONSULTANT may have access to, in accordance with any applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting CITY'S right of access to records or other information under this CONTRACT.
- 5.3 If CONSULTANT receives inquiries regarding documents within its possession pursuant to this contract, CONSULTANT shall immediately forward such request to CITY for disposition.

#### **VI. OWNERSHIP AND EXAMINATION OF DOCUMENTS**

- 6.1 All reports, information, and other data given to, prepared by, or assembled by CONSULTANT pursuant to this contract and any other related documents or items shall become the sole property of CITY. Such reports, information, and other data shall be delivered at no cost to CITY upon request or upon termination of this contract without restriction on future use. CONSULTANT may make copies of any and all documents for its files, at its sole cost and expense.
- 6.2 CONSULTANT shall retain all records owned by CITY or to which CITY has access for the retention periods specified by local, state, or federal law or by this contract.
- 6.3 CITY reserves the right to conduct examinations, during regular business hours and following notice to CONTRACTOR by CITY of the files, books and records related to



the contract with CITY (including such items as specimen maintenance, contracts, paper, correspondence, copy, books, accounts, billings and other information related to the performance of CONTRACTOR'S services hereunder) no matter where books and records are located. CITY also reserves the right to perform any and all additional audit tests relating to CONTRACTOR'S services, provided that such audit tests are related to those services performed by the CONTRACTOR for CITY. These examinations shall be conducted at the offices maintained by CONTRACTOR.

## **VII. DEFAULT AND TERMINATION**

- 7.1 For purposes of this contract, "termination" of this contract shall mean termination by expiration of the contract term as set out in article I or earlier termination pursuant to any of the provisions of this contract.
- 7.2 CITY may terminate this contract in accordance with this article, in whole or in part, at any time, for any reason, upon written notice to CONSULTANT. Said notice shall specify the date of termination.
- 7.3 In no event shall CITY'S action of terminating this contract be deemed an election of CITY'S remedies, nor shall such termination limit, in any way, at law or at equity, CITY'S right to seek damages from or otherwise pursue CONSULTANT for any default hereunder or other action.
- 7.4 If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or if any law is interpreted to prohibit such performance, this contract shall automatically terminate as of the effective date of such prohibition.
- 7.5 Should this contract be terminated prior to completion of the work identified in article II, CONSULTANT shall, within five business days of the effective date of termination, submit to the CITY its claim, in detail, for the monies owed by the CITY for services performed under this contract through the effective date of termination.
- 7.6 Should CONSULTANT neglect or fail to perform or observe any of the terms, provisions, conditions, or covenants herein contained, and on CONSULTANT'S part to be performed or any way observed, and if such neglect or failure should continue for a period of ninety days after receipt by CONSULTANT of written notice from CITY of such neglect or failure, CITY may terminate this contract. In the event of such default, CONSULTANT shall not receive further payments under the terms of this contract after said ninety-day cure period, and CITY shall be relieved of any further obligations to CONSULTANT.

## **VIII. NON-WAIVER**

- 8.1 Unless otherwise specifically provided for in this contract, a waiver by either party of a breach of any of the terms, conditions, covenants, or guarantees of this contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant, or guarantee herein contained. Further, any failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification, or discharge by either party hereto of any provision of this contract shall be deemed to have been made or shall be effective, unless expressed in writing and signed by the party to be charged. No act or omission by a party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

## **IX. INDEPENDENT CONTRACTOR**

- 9.1 CONSULTANT covenants and agrees that CONSULTANT is an independent contractor and not an officer, agent, servant, or employee of CITY; that CONSULTANT shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors, and consultants; that the doctrine of respondent superior shall not apply as between CITY and CONSULTANT, its officers, agents, employees, contractors, subcontractors, and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners, or joint venturers between CITY and CONSULTANT. The parties hereto understand and agree that the CITY shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the CONSULTANT under this agreement and that the CONSULTANT has no authority to bind the CITY.
- 9.2 Regardless of where the work shall be performed, what supplies or resources are provided by CITY, what instruction or direction is provided by CITY, CONSULTANT and those persons designated by it to provide services shall not be deemed employees of CITY and shall not be entitled to wages or benefits from CITY, other than the compensation provided herein.

## **X. SUBCONTRACTING AND ASSIGNMENT**

- 10.1 Any other clause of this contract to the contrary notwithstanding, none of the work or services covered by this contract shall be subcontracted without the prior written approval of CITY. Any work or services approved for subcontracting hereunder, however, shall be subcontracted only by written contract or agreement and, unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of



this contract. Compliance by subcontractors with this contract shall be the responsibility of CONSULTANT.

- 10.2 Despite CITY approval of a subcontract, CITY shall, in no event, be obligated to any third party, including any subcontractor of CONSULTANT, for performance of work or services, nor shall CITY funds ever be used for payment of work or services performed prior to the date of contract execution or after the termination of this contract.
- 10.3 Except as otherwise stated herein, CONSULTANT may not sell, assign, pledge, transfer, or convey any interest in this contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, without the prior written consent of CITY. As a condition of such consent, if such consent is granted, CONSULTANT shall remain liable for completion of the services outlined in this contract in the event of default by the successor, assignee, transferee, or subcontractor.
- 10.4 Any attempt to transfer, pledge, or otherwise assign this contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should CONSULTANT assign, transfer, convey, delegate, or otherwise dispose of any part or all of its right, title, or interest in this contract, CITY may, at its option, cancel this contract and all rights, titles, and interest of CONSULTANT shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this contract. The violation of this provision by CONSULTANT shall in no event release CONSULTANT from any obligation under the terms of this contract, nor shall it relieve or release CONSULTANT from the payment of any damages to CITY, which CITY sustains as a result of such violation.

## **XI. CONFLICT OF INTEREST**

- 11.1 CONSULTANT acknowledges that it is informed that the Charter of the City of San Antonio and CITY'S Ethics Code prohibit a CITY officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with CITY or any CITY agency such as CITY owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land, materials, supplies, or services, if any of the following individuals or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten percent or more of the voting stock or shares of the business entity, or ten percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.
- 11.2 Pursuant to the subsection above, CONSULTANT warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees, and agents are neither officers nor employees of CITY. CONSULTANT further warrants and certifies that it has tendered to CITY a discretionary contracts disclosure statement in compliance with CITY'S Ethics Code.



## XII. INDEMNITY

- 12.1 CONSULTANT COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO CONSULTANT'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF THE RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.
- 12.2 THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. CONSULTANT SHALL ADVISE THE CITY IN WRITING WITHIN TWENTY-FOUR HOURS OF ANY CLAIM OR DEMAND AGAINST CITY OR CONSULTANT KNOWN TO CONSULTANT RELATED TO OR ARISING OUT OF CONSULTANT'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT CONSULTANT'S COST. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONSULTANT OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.
- 12.3 DEFENSE COUNSEL - CITY SHALL HAVE THE RIGHT TO SELECT OR TO APPROVE DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN



**FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CONSULTANT SHALL RETAIN CITY APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS CONTRACT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. CITY SHALL ALSO HAVE THE RIGHT, AT ITS OPTION, TO BE REPRESENTED BY ADVISORY COUNSEL OF ITS OWN SELECTION AND AT ITS OWN EXPENSE, WITHOUT WAIVING THE FOREGOING.**

- 12.4 **EMPLOYEE LITIGATION - IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED HEREUNDER BY ANY EMPLOYEE OF CONSULTANT, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONSULTANT OR ANY SUBCONTRACTOR UNDER WORKER'S COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.**

### **XIII. INSURANCE**

- 13.1 Prior to the commencement of any work under this Agreement, CONSULTANT shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the San Antonio Police Department, which shall be clearly labeled "*Random and Post Accident Drug Testing Services*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the CITY's Police Department. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.
- 13.2 The CITY reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will CITY allow modification whereby CITY may incur increased risk.

- 13.3 A CONSULTANT's financial integrity is of interest to the CITY; therefore, subject to CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by the CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at CONSULTANT's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPES	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
4. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal Injury d. Contractual Liability	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
5. Professional Liability (claims-made basis)  to be maintained and in effect for no less than two years subsequent to the completion of the professional service	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services

- 13.4 CONSULTANT agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of CONSULTANT herein, and provide a certificate of insurance and endorsement that names the CONSULTANT and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of CONSULTANT. CONSULTANT shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This



provision may be modified by CITY's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by CITY's Risk Manager, which shall become a part of the contract for all purposes.

- 13.5 As they apply to the limits required by the CITY, the CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. CONSULTANT shall be required to comply with any such requests and shall submit requested documents to CITY at the address provided below within 10 days. CONSULTANT shall pay any costs incurred resulting from provision of said documents.

Drug Testing Coordinator  
San Antonio Police Department  
315 S. Santa Rosa  
San Antonio, Texas 78207

- 13.6 CONSULTANT agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the CITY, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the CITY is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the CITY.
- Provide advance written notice directly to CITY of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

- 13.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, CONSULTANT shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONSULTANT's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

- 13.8 In addition to any other remedies the CITY may have upon CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order CONSULTANT to stop work

hereunder, and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof.

- 13.9 Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's or its subcontractors' performance of the work covered under this Agreement.
- 13.10 It is agreed that CONSULTANT's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 13.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the CITY shall be limited to insurance coverage provided.
- 13.12 CONSULTANT and any Subcontractors are responsible for all damage to their own equipment and/or property.

#### **XIV. CHANGES AND AMENDMENTS**

- 14.1 Except when the terms of this contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and CONSULTANT.
- 14.2 It is understood and agreed by the parties hereto that changes in local, state, and federal rules, regulations, or laws applicable hereto may occur during the term of this contract and that any such changes shall be automatically incorporated into this contract without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation, or law.

#### **XV. ENTIRE AGREEMENT**

- 15.1 This contract and its exhibits constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the parties hereto unless in writing, dated subsequent to the date hereof, and only executed by the parties.

#### **XVI. SEVERABILITY**

- 16.1 If any clause or provision of this contract is held invalid, illegal, or unenforceable under present or future federal, state, or local laws, including, but not limited to, the city charter, city code, or ordinances of the city of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality, or unenforceability shall not affect any other clause or provision hereof and that the remainder of this



contract shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this contract that is invalid, illegal, or unenforceable, there be added as a part of the contract a clause or provision as similar in terms to such invalid, illegal, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

#### **XVII. NOTICES**

- 17.1 For purposes of this contract, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

##### CITY

Drug Testing Coordinator  
San Antonio Police Department  
315 S. Santa Rosa  
San Antonio, Texas 78207

##### CONSULTANT

Judith Williamson  
A & D Tests, Inc.  
3015 General Hudnell  
San Antonio, Texas 78226

#### **XVIII. LAW APPLICABLE**

- 18.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.
- 18.2 VENUE AND JURISDICTION FOR ANY LEGAL ACTION OR PROCEEDING BROUGHT OR MAINTAINED, DIRECTLY OR INDIRECTLY, UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL LIE EXCLUSIVELY IN BEXAR COUNTY, TEXAS.
- 18.3 The Parties expressly agree that in the event of litigation, each party waives its right to attorneys' fees.

#### **XIX. NON-DISCRIMINATION**

- 19.1 As a party to this Contract, CONSULTANT 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.
- 19.2 As a condition of entering into this Contract, the CONSULTANT represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such

compliance, CONSULTANT shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONSULTANT's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONSULTANT shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

#### **XX. LEGAL AUTHORITY**

- 20.1 The signer of this contract for CONSULTANT represents, warrants, assures, and guarantees that he' has full legal authority to execute this contract on behalf of CONSULTANT and to bind CONSULTANT to all of the terms, conditions, provisions, and obligations herein contained.

#### **XXI. PARTIES BOUND**

- 21.1 This contract shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns, except as otherwise expressly provided for herein.

#### **XXII. GENDER**

- 22.1 Words of any gender used in this contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

#### **XXIII. CAPTIONS**

- 23.1 The captions contained in this contract are for convenience of reference only and in no way limit or enlarge the terms and/or conditions of this contract.

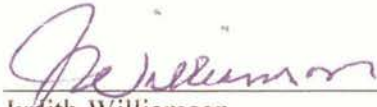


EXECUTED IN DUPLICATE ORIGINALS on this \_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF SAN ANTONIO**

**A&D TESTS, INC.**

\_\_\_\_\_  
María Villagómez  
Deputy City Manager

  
\_\_\_\_\_  
Judith Williamson  
President

Approved As To Form:

\_\_\_\_\_  
Krista Cover  
Assistant City Attorney

**WITNESSETH:**

**HIPAA BUSINESS ASSOCIATE AGREEMENT**

This HIPAA Business Associate Agreement (**Agreement**) is entered into by and between the City of San Antonio ("**Covered Entity**"), and A&D Tests, Inc., a **Business Associate** ("**BA**"), referred to collectively herein as the "**Parties**."

WHEREAS, the City of San Antonio and BA have entered into a Professional Services Contract ("**Service Contract**"), executed on December 2, 2019, whereby BA provides drug testing services to the Covered Entity; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information ("**PHI**"); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("**HIPAA**") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "**HIPAA Regulations**"), Health Information Technology for Economic and Clinical Health Act ("**HITECH Act**") and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("**C.F.R.**"), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:

(1) "Breach" shall mean an impermissible use or disclosure under the Privacy Rule that compromises the security or privacy of the protected health information. An impermissible use or disclosure of protected health information is presumed to be a breach unless the covered entity or business associate, as applicable, demonstrates that there is a low probability that the protected health information has been compromised based on a risk assessment of at least the following factors:

- (a) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
  - (b) the unauthorized person who used the protected health information or to whom the disclosure was made;
  - (c) whether the protected health information was actually acquired or viewed;
- and



- (d) the extent to which the risk to the protected health information has been mitigated.
- (2) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. 164.501.
- (3) "Disclosure" with respect to PIII, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.
- (4) "Health Information" is defined in 45 C.F.R. 160.103 as any information, including genetic information, whether oral or recorded in any form or medium that: (1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.
- (5) "Individual" means the person who is the subject of protected health information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).
- (6) "Individually Identifiable Health Information" is defined in 45 C.F.R. 160.103 as information that is a subset of health information, including demographic information collected from an individual, and: (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (7) "Privacy Rule" shall mean the regulations for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subpart E.
- (8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 160.103, limited to the information created or received by BA from or on behalf of Covered Entity. PHI includes "Electronic Protected Health Information" or "E PHI" and shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 C.F.R. Parts 160, 162, 164, and under HITECH.
- (9) "Required By Law" means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits. 45 C.F.R 164.103.

- (10) "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.
- (11) "Security Rules" shall mean the Security Standards for the Protection of Electronic Protected Health Information codified at 45 C.F.R. Part 164.
- (12) The Health Information Technology for Economic and Clinical Health ("HITECH") Act shall mean Division A, Title XII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

B. BA Obligations and Activities. BA agrees that it shall:

- (1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;
- (2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of Covered Entity;
- (3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;
- (4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any Security Incident as defined by 45 C.F.R. 164.304 that BA becomes aware of;
- (5) Ensure that a business associate agreement is in place with any of its agents or subcontractors with which BA:
  - (a) does business, and
  - (b) to whom it provides PHI received from, or created or received by BA on behalf of, Covered Entity; and ensures such agents or subcontractors are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards that render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI;
- (6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;
- (7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;



- (8) Make available to the Covered Entity or to the Secretary all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary in determining Covered Entity's compliance with the Privacy Rule;
- (9) Document disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (11) Immediately, and in no event later than three days from discovery, notify Covered Entity of any breach of PHI, including ePHI, and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and U.S. Department of Health and Human Services, as required, any covered PHI breach. Breach notification to Covered Entity must include: names of individuals with contact information for those who were or may have been impacted by the HIPAA Breach; a brief description of the circumstances of the HIPAA Breach, including the date of the breach and date of discovery; a description of the types of unsecured PHI involved in the breach; a brief description of what the BA has done or is doing to investigate the breach and mitigate harm. BA will appoint a breach liaison and provide contact information to provide information and answer questions Covered Entity may have concerning the breach;
- (12) Comply with all Security Rules requirements;
- (13) Comply with the Privacy Rule for any obligation Covered Entity delegates to BA;
- (14) Under no circumstances sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153, effective September 1, 2012, nor shall BA use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code Section 181.152, or attempt to re-identify any information in violation of Texas Health and Safety Code Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity.

C. Permitted Uses and Disclosures by BA

- (1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed

only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

- (3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- (4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 164.502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

- (1) Notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;
- (2) Notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;
- (3) Notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.
- (4) Coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the BA may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

- (1) This Agreement becomes effective on the date it is signed by the last Party. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.
- (2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Service Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a



material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(3) Effect of Termination.

(a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.

(b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.

(4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.

G. Amendment to Comply with Law. The Parties agree to take written action as is necessary to amend this Agreement to comply with any Privacy Rules and HIPAA legal requirements for Covered Entity without the need for additional council action.

H. Survival. The respective rights and obligations of the BA under Sections B, C (2) and (4), and F(3) shall survive the termination of this Agreement.

I. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.

J. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.

K. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

L. **INDEMNIFICATION**. ***BA WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICE CONTRACT, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.***

- M. **Reimbursement.** BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.
- N. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- O. **Assignment.** Neither party may assign (whether by operation of law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of BA.
- P. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contract or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.
- Q. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

**EXECUTED** to be effective January 1, 2020, by the **City of San Antonio**, signing by and through its program manager.

**COVERED ENTITY**  
By City of San Antonio

**BUSINESS ASSOCIATE:**

By: \_\_\_\_\_

By: 

Print Name:  
Print Title:

Print Name: J. WILLIAMSON  
Print Title: PRESIDENT

APPROVED AS TO FORM:

\_\_\_\_\_  
Krista Cover  
Assistant City Attorney