

AN ORDINANCE 2016-01-28-0038

AUTHORIZING A FOUR-YEAR CONTRACT WITH ALCOHOL & DRUG TESTS, INC. TO PROVIDE RANDOM, REASONABLE SUSPICION, AND POST-ACCIDENT DRUG TESTING OF POLICE OFFICERS FOR THE SAN ANTONIO POLICE DEPARTMENT IN AN AMOUNT UP TO \$160,000.00.

WHEREAS, the San Antonio Police Department is in need of random, reasonable suspicion, and post-accident drug testing services; and

WHEREAS, after the issuance of a request for proposals, the receipt of the proposals submitted in response, and an extensive evaluation of the proposals, Alcohol & Drug Tests, Inc. was selected to provide said services; and

WHEREAS, the annual cost that the City would incur during the term of the contract would not exceed \$48,000.00; and

WHEREAS, the total cost that the City would incur during the term of the contract would not exceed \$160,000.00; and

WHEREAS, the term of contract will be from the date of execution through December 31, 2017, with two one-year renewal options; **NOW THEREFORE:**

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

SECTION 1. The City Manager and her designated representative are hereby authorized to execute a contract with Alcohol & Drug Tests, Inc. to provide random, reasonable suspicion, and post-accident drug testing services for the San Antonio Police Department. A copy of said contract is attached hereto as **Exhibit I**, and the terms and conditions contained in said contract are hereby approved.

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 2016 Budget. Additional funding for this Ordinance is contingent upon City Council approval of the Fiscal Year 2017 and subsequent budgets for the duration of this contract. Payment not to exceed the budgeted amount is authorized to Alcohol and Drug Tests, Inc. 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 the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 26th day of January, 2016.



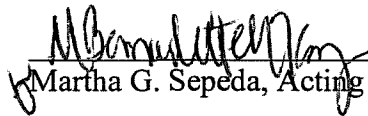
M A Y O R
Ivy R. Taylor

ATTEST:

APPROVED AS TO FORM:



Lencia M. Vacek, City Clerk



Martha G. Sepeda, Acting City Attorney

Agenda Item:	26 (in consent vote: 4, 5, 7A, 7B, 9, 10A, 10B, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 30)						
Date:	01/28/2016						
Time:	09:20:26 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a four-year contract with A&D Tests, Inc. to provide random, reasonable suspicion, and post-accident drug testing of police officers for the San Antonio Police Department in an amount up to \$160,000.00. [Erik J. Walsh, Deputy City Manager; William P. McManus, Police Chief]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				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					
Cris Medina	District 7	x					
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

**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 December 18, 2015, and shall terminate on December 31, 2017, 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 the approval of the City Manager or her designee, without the necessity of further authorization of the San Antonio City 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 25% of the authorized manpower of the SAPD or approximately 575 officers annually for testing through the use of a non-discriminatory computerized program.
- 2A.3 Random drug testing shall consist of a urinalysis.

Exhibit I

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 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.
- 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 three hours, an officer has not provided a specimen, CONSULTANT shall contact CITY's drug testing 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 ensure that the individual or laboratory selected for collecting samples conducts and documents background investigations on all personnel involved in the collection or handling of an unsealed specimen.

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 test is performed at a SAMHSA/CAP FUDTP certified laboratory.

H. CONSULTANT shall conduct an initial screening (5-panel) split sample urine test for the listed drugs at the listed levels:

Marijuana metabolite	50 ng/ml
Cocaine metabolite	300 ng/ml
Opiate metabolite	2,000 ng/ml
Phencyclidine	25 ng/ml
Amphetamines	1,000 ng/ml

I. Concentrations of a drug at or higher than the above levels shall be considered a positive test on the initial drug-screening test. An initial positive test result will not be considered conclusive; rather, it will be classified as "confirmation pending". A positive test result on the initial drug-screening test will automatically require the performance of a confirmation drug test.

J. CONSULTANT shall conduct a confirmation (5-panel) urine test for the listed drugs at the listed levels:

Marijuana metabolite	15 ng/ml
Cocaine metabolite	150 ng/ml
Opiates:	
Morphine	2,000 ng/ml
Codeine	2,000 ng/ml
6-Acetylmorphine	10 ng/ml
Phencyclidine	25 ng/ml
Amphetamines:	
Amphetamines	500 ng/ml
Methamphetamine	500 ng/ml

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.2 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 drug testing coordinator.
- 2D.3 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.4 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.5 CONSULTANT shall ensure that no employee is used in the collection or handling of an unsealed specimen or in conducting a breathalyzer test has been convicted of a felony or misdemeanor crime involving dishonest conduct or possession of illegal drugs.
- 2D.6 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. Test results shall be provided to the Chief of Police via telephone within forty-eight hours and in writing within five days after specimen collection.
- 2D.7 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.8 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.9 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.10 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.11 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.

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 \$35.00 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 \$20.00 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 \$35.00 per 5-panel, on-site screening test. This fee shall include any required confirmatory test.
- 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 \$85.00 for a stat 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 ail additional audit tests relating to CONTRACTOR'S services, provided that such audit test 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	Statutory Limits \$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Personal/Advertising Injury c. Products/Completed Operations	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. 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 same be 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.

XIX. LEGAL AUTHORITY

- 19.1 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.

XX. PARTIES BOUND

- 20.1 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.

XXI. GENDER

- 21.1 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.

XXII. CAPTIONS

22.1 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 _____, 2015.

CITY OF SAN ANTONIO

A&D TESTS, INC.

Erik J. Walsh
Deputy City Manager

Judith Williamson
President

Approved As To Form:

Martha G. Sepeda
Acting City Attorney