

**CITY OF SAN ANTONIO
POLICE DEPARTMENT
COUNCIL AGENDA MEMORANDUM**

CONSENT AGENDA
ITEM NO. 30

TO: Mayor and City Council

FROM: Albert A. Ortiz, Chief of Police

SUBJECT: Drug Testing Services Contract for the San Antonio Police Department

DATE: September 29, 2005

SUMMARY AND RECOMMENDATIONS

This ordinance approves the selection of, and will authorize the City Manager, or his designated representative, to execute a contract with A & D Tests, Inc. to provide random drug testing and drug testing based on reasonable suspicion for the San Antonio Police Department. The contract is for a primary term of one year; with three one-year unilateral renewal options to the City; in an amount not to exceed \$35,000 annually.

Staff recommends approval.

BACKGROUND INFORMATION

The Drug Interdiction Program, which calls for the mandatory drug testing of officers, was agreed upon as part of the Collective Bargaining Agreement (Article 33, Sec. 2) between the City and the San Antonio Police Officers Association in November 1999. A Request for Proposals was advertised in April 2001 for drug testing services, and after an extensive review process, Alcohol and Drug Tests, Inc., was selected as the most responsive and highest rated firm, and the contract was executed for the fiscal year beginning October 2001. This contract and its authorized extensions will expire on September 30, 2005.

An RFP for these services was advertised in July-August, 2005, and two firms, A & D Tests, Inc. and Concentra Medical Centers responded. The two proposals were rated based on the firms' experience, background and capability, proposed plans of operation, proposed price and Small Business Program compliance. The evaluation and scoring of the proposals was conducted by an ad hoc committee that included representatives of the Police, Fire, and Human Resources Departments, as well as the San Antonio Police Officers Association. Based on its evaluation, the committee recommends A & D Tests, Inc. for this contract, as the highest ranked and most responsive firm. A copy of the scoring matrix summary is included herein as Attachment A.

Services to be provided by A & D Tests, Inc. include on-site random sample collection and testing, as well as collection and testing based on reasonable suspicion. The firm will be available twenty-four hours, seven days a week for consultation and testing services and will utilize the services of Quest Diagnostics as the subcontractor for lab work. As required by the Collective Bargaining Agreement, Quest Diagnostics is certified by the Substance Abuse Mental Health Services Administration (SAMSHA) and the College of American Pathologist Forensic, Urine, Drug Testing Program (CAP FUDTP) to perform drug testing services. A copy of the contract with A & D Tests, Inc. is included herein as Attachment B.

A & D Tests, Inc. is classified as a Woman-owned Business Enterprise (WBE) and a Historically Underutilized Enterprise (HUE). The points awarded by the City's Economic Development Department Small Business Office in the evaluation process are included in the scoring summary (Attachment A).

POLICY ANALYSIS

This ordinance will allow for continuation of a program agreed upon by the San Antonio Police Officers Association (SAPOA) and the City of San Antonio via the Collective Bargaining Agreement of 1999.

FISCAL IMPACT

This activity is provided for in the Police Department's General Fund budget for an amount not to exceed \$35,000.

COORDINATION

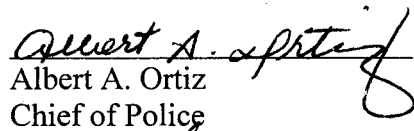
This ordinance request has been coordinated with the Finance Department, City Attorney's Office, Contract Services Department and the Office of Management & Budget.

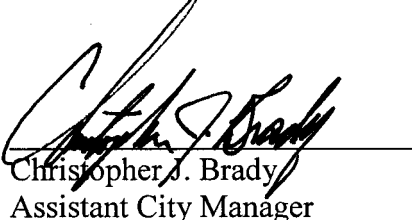
SUPPLEMENTARY COMMENTS

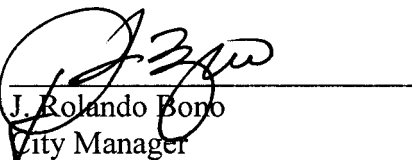
The City of San Antonio Discretionary Contracts Disclosure form required by the Ethics Ordinance is included herein as Attachment 3.

ATTACHMENTS:

1. Scoring Matrix Summary
2. Contract with A & D Tests, Inc.
3. Discretionary Contracts Disclosure Form


Albert A. Ortiz
Chief of Police


Christopher J. Brady
Assistant City Manager


J. Rolando Bono
City Manager

Third Party Administration and Medical Cost Containment Services RFP

Attachment A

	Maximum Points	A & D TESTS, INC.	CONCENTRA HEALTH SERVICES
A - Background, Capability & Experience	40	38.8	37.0
B - Respondent's Proposed Plan	25	23.7	18.7
Sub-Total	65	62.5	55.7
D - Proposed Fee Schedule	15	15.0	15.0
Sub-Total	80	77.5	70.7
F - Local Business Enterprise	10	0.9	6.0
F - Historically Underutilized Enterprise	5	5.0	0.0
F - Compliance w/SBEDA Policy	5	3.0	0.0
TOTAL SCORE	100	86.4	76.7

City of San Antonio
Discretionary Contracts Disclosure

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.

(1) Identify any individual or business entity¹ that is a **party** to the discretionary contract:

NONE

(2) Identify any individual or business entity which is a **partner**, **parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

☒ No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

☒ No subcontractor(s); or

List subcontractors:

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

☒ No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

¹ A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any *current or former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

☒ No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:


(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question¹ as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

☒ Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature:**Title:**

PRESIDENT

Company or D/B/A:

A+D TESTS, INC

Date:

8.23.05

¹ For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

**CONTRACT FOR
RANDOM AND REASONABLE SUSPICION
DRUG TESTING SERVICES**

This CONTRACT is entered into by and between the CITY of San Antonio (hereinafter referred to as "CITY") pursuant to Ordinance No. _____, and A & D TESTS, INC. (hereinafter referred to as "CONTRACTOR"), a domestic corporation licensed to do business in the State of Texas, acting by and through duly authorized officials, WITNESSETH:

I. PURPOSE

- 1.1 The purpose of this CONTRACT is to state the terms and conditions under which CONTRACTOR shall perform services as the random and reasonable suspicion drug testing service of CITY'S Police Department (hereinafter "DEPARTMENT"). Nothing in this CONTRACT is intended to constitute CONTRACTOR as the legal agent of CITY.

II. SCOPE OF SERVICES

- 2.1 CITY hereby employs CONTRACTOR to provide random and reasonable suspicion drug testing services (hereinafter "testing") during the term of this CONTRACT, unless terminated pursuant to the terms contained herein.
- 2.2 CONTRACTOR shall be available twenty-four (24) hours per day to perform testing.
- 2.3 CONTRACTOR shall randomly select 25% of the authorized manpower of DEPARTMENT or approximately 500 officers annually for testing through the use of a non-discriminatory computerized program.
- 2.4 CONTRACTOR shall store all testing specimens (both positive and negative) collected for a period of one (1) year or until all administrative or legal disputes have been resolved, which could be a number of years. CITY shall give CONTRACTOR reasonable notice if administrative and legal disputes arise, in order for CONTRACTOR to retain the specimen involved.
- 2.5 Pursuant to the provisions of the Collective Bargaining Agreement in effect, CONTRACTOR 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 (5) hours after notification.
- 2.6 CONTRACTOR shall allow an officer up to four (4) hours to provide a specimen and document the circumstances surrounding any unwillingness, failure or inability to provide a specimen.
- 2.7 CONTRACTOR shall obtain a urine specimen through stricter observation where there is reason to believe, as determined by CONTRACTOR and CITY, that an initial specimen has been altered or substituted.

- 2.8 CONTRACTOR 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.
- 2.9 CONTRACTOR shall ensure that only employees who have not been arrested by officers of the DEPARTMENT are used in the collecting and handling of an unsealed specimen.
- 2.10 CONTRACTOR shall ensure that no employee is used in the collection or handling of an unsealed specimen who has been convicted of a felony or misdemeanor crime involving dishonest conduct or possession of illegal drugs.
- 2.11 CONTRACTOR 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 San Antonio Police DEPARTMENT (hereinafter "DEPARTMENT"). Test results shall be provided to the Chief of Police via telephone within 48 hours, and in writing within five (5) days after specimen collection.
- 2.12 CONTRACTOR shall use a laboratory that is experienced and capable of quality control documentation, chain of custody, 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).
- 2.13 CONTRACTOR shall ensure that both the initial and confirmation test is performed at a SAMHSA/CAP FUDTP certified laboratory.
- 2.14 CONTRACTOR shall conduct an initial screening (5 panel) split sample urine test for the listed drugs at the listed levels:

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

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.

- 2.15 CONTRACTOR shall conduct a confirmation (5 panel) urine test for the listed drugs at the listed levels:

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

- 2.16 CONTRACTOR shall provide a medical review officer.
- 2.17 CONTRACTOR shall expedite the collection of urine from on-duty DEPARTMENT officers and provide a separate private waiting area if collection is performed at a local laboratory.
- 2.18 CONTRACTOR 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.
- 2.19 CONTRACTOR shall deliver all data to DEPARTMENT at the end of the CONTRACT, or if terminated earlier, pursuant to the terms contained herein.
- 2.20 CONTRACTOR shall keep individual laboratory results strictly confidential.
- 2.21 CONTRACTOR shall obtain DEPARTMENT approval for any additional use of information collected pursuant to the terms of this CONTRACT.
- 2.22 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.
- 2.23 Prior to discarding specimens at the end of the one year retention period, CONTRACTOR shall notify CITY and obtain CITY approval to discard said specimens.

III. TERM OF CONTRACT

- 3.1 Unless otherwise terminated as provided for in Article IX, the term of this CONTRACT shall commence upon execution by both parties and shall remain in force for a one (1) year period, with three (3) one (1) year renewal options at the sole discretion of the San Antonio City Council, as evidenced by a duly authorized ordinance.

IV. COMPENSATION TO CONTRACTOR

- 4.1 In consideration of CONTRACTOR'S performance of the services set forth in this CONTRACT, CITY agrees to pay CONTRACTOR an amount not to exceed thirty-five thousand and no/100 dollars (\$35,000.00) annually, as evidenced by duly authorized invoices sent to CITY from CONTRACTOR. CITY agrees to pay CONTRACTOR'S invoices within thirty (30) days of CITY'S receipt of invoice.
- 4.2 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.
- 4.3 Regardless of any CITY approval of a subcontract, CITY shall in no event be obligated to any third party, including any subcontractor of CONTRACTOR for performance of work or service.
- 4.4 CONTRACTOR shall be paid \$50.00 per 5-panel, on-site screening test. This fee shall include any required confirmatory test.
- 4.5 CONTRACTOR shall be paid \$150.00 for each hour that the medical review officer attends or participates in any administrative hearing.
- 4.6 CONTRACTOR 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, or for the participation of the medical review officer in administrative hearings.

V. ASSIGNMENT AND SUBCONTRACTING

- 5.1 This is a professional services CONTRACT and the rights, duties, responsibilities and obligations of CONTRACTOR are not assignable without the express written consent of CITY. No part of this CONTRACT may be assigned by CONTRACTOR without approval of CITY, as evidenced by a duly authorized ordinance, passed and approved by City Council.
- 5.2 No subcontractors or other service providers shall be hired by CONTRACTOR in relation to this CONTRACT without specific written approval from CITY, which approval may be obtained from the Chief of DEPARTMENT.
- 5.3 Any work or services subcontracted herein shall be subcontracted only by written contract or agreement and, unless CITY grants specific waiver in writing, shall be subject by its terms, insofar as any obligation of CITY is concerned, to each and every provision of this CONTRACT. Compliance by CONTRACTOR'S subcontractors with this CONTRACT shall be the responsibility of CONTRACTOR.
- 5.4 CITY shall in no event be obligated to any third party, including any subcontractor or consultant of CONTRACTOR, for performance of work or services under this CONTRACT, except as set forth in Section 5.7 of this CONTRACT.
- 5.6 CONTRACTOR shall not transfer or assign this CONTRACT or CONTRACTOR'S interest in this CONTRACT or any part thereof without having first obtained the prior written consent of CITY which may be given only by or pursuant to an ordinance enacted by the City Council of San Antonio, Texas, provided, however, that the foregoing shall not apply to and shall not prevent the assignment of this CONTRACT to any corporation with which CONTRACTOR may merge or consolidate or which may succeed to a controlling interest in the business of CONTRACTOR.
- 5.7 Each transfer or assignment to which there has been consent, pursuant to section 5.4 above, shall be by instrument in writing, in form reasonably satisfactory to CITY, and shall be executed by the transferee or assignee who shall agree in writing for the benefit of CITY to be bound by and to perform the terms, covenants and conditions of this CONTRACT. Four (4) executed copies of such written instrument shall be delivered to CITY. Failure to first obtain in writing CITY'S consent, or failure to comply with the provisions herein contained shall operate to prevent any such transfer or assignment from becoming effective.

- 5.7 Should CITY approve the assignment of this CONTRACT, as evidenced by the passage of an ordinance by City Council, and to the extent that such assignee assumes CONTRACTOR'S duties and obligations hereunder, CONTRACTOR shall by virtue of such assignment be released from such duties and obligations.
- 5.8 The receipt by CITY of services from an assignee of CONTRACTOR shall not be deemed a waiver of the covenant in this CONTRACT against assignment or an acceptance of the assignee as CONTRACTOR or a release of CONTRACTOR from further observance or performance by CONTRACTOR of the covenants contained in this CONTRACT. No provision of this CONTRACT shall be deemed to have been waived by CITY unless such waiver is in writing, and approved by City Council in the form of a duly passed ordinance.

VI. INDEMNIFICATION

- 6.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, and representatives of CITY, individually or 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 CITY, directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this CONTRACT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this CONTRACT, all without, however, waiving any governmental immunity available to CITY under Texas Law and without waiving any defenses of the parties under Texas Law. Additionally, CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, and representatives of CITY, individually or collectively, from and against any liability or claims of conspiracy from or related to CONTRACTOR'S activities in connection with this CONTRACT. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNIFICATION 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. CONTRACTOR shall promptly advise CITY in writing of any claim or demand against CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at CONTRACTOR'S cost. CITY shall have the right, at its option and at its own expense, to participate in such**

defense without relieving CONTRACTOR of any of its obligations under this paragraph.

- 6.2 It is the EXPRESS INTENT of the parties to this contract that the INDEMNITY provided for in this Article (Article VI), is an INDEMNITY extended by CONTRACTOR to INDEMNIFY, PROTECT and HOLD HARMLESS CITY from the consequences of CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this Article SHALL APPLY only when the NEGLIGENT ACT of CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of CITY is the sole cause of the resultant injury, death, or damage. CONTRACTOR further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF CITY AND IN THE NAME OF CITY, any claim or litigation brought against CITY and its elected officials, employees, officers, directors and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

VII. INSURANCE REQUIREMENTS

- 7.1 Prior to the commencement of any work under this CONTRACT, CONTRACTOR shall furnish an original completed Certificate(s) of Insurance or CITY'S Standard Certificate of Insurance form to the San Antonio Police Department, CITY'S Risk Management Division and City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to CITY. CITY shall have no duty to pay or perform under this CONTRACT until such certificate shall have been delivered to the San Antonio Police Department, CITY'S Risk Management Division and the City Clerk's Office, and no officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.
- 7.2 CITY reserves the right to review the insurance requirements of this Article during the effective period of this CONTRACT, and any extension or renewal hereof, and to modify insurance coverage 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 CONTRACT, but in no instance will CITY allow modification whereupon CITY may incur increased risk.
- 7.3 CONTRACTOR'S financial integrity is of interest to CITY; therefore, subject to CONTRACTOR'S right to maintain reasonable deductibles in such amounts as are approved by CITY, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this CONTRACT, and any extension hereof, at CONTRACTOR'S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best

Company and/or otherwise acceptable to CITY, in the following types and amounts:

TYPE OF INSURANCE

LIMITS OF LIABILITY

Commercial General Liability insurance to include coverage for the following

• General Aggregate	\$1,000,000 per occurrence; \$2,000,000 general aggregate or its equivalent in Umbrella or Excess Liability coverage
• Premises operations	\$1,000,000
• Independent contractors	\$1,000,000
• Products/completed operations	\$1,000,000
• Contractual liability	\$1,000,000
• Explosion. Collapse. Underground	\$1,000,000
• Broad form property damage	\$1,000,000
• Fire legal liability	\$50,000
Business Automobile Liability	
• Scheduled Autos	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property</u>
• Owned/Leased Automobiles	<u>Damage</u> of \$1,000,000 per occurrence
• Non-Owned Automobiles	
• Hired Automobiles	
Workers' Compensation	Statutory
Employer's Liability	\$500,000/\$500,000/\$500,000
Professional Liability	\$1,000,000
(Claims made form)	

7.4 CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by CITY, CONTRACTOR shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

7.5 CONTRACTOR agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

7.5.1 Name CITY and its officers, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY, with the exception of the workers' compensation and professional liability policies;

- 7.5.2 CONTRACTOR'S insurance shall be deemed primary with respect to any insurance or self insurance carried by CITY for liability arising out of operations under the contract with CITY; and
- 7.5.3 Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of CITY.
- 7.6 CONTRACTOR shall notify CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to CITY at the following addresses:
- | | |
|-------------------------------|-------------------------------|
| City of San Antonio | City of San Antonio |
| San Antonio Police Department | City Clerk's Office |
| P.O. Box 839966 | P.O. Box 839966 |
| San Antonio, Texas 78283-3966 | San Antonio, Texas 78283-3966 |
- 7.7 If CONTRACTOR fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have, and is not the exclusive remedy for failure of CONTRACTOR to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon CONTRACTOR'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order CONTRACTOR to stop work hereunder, and/or withhold any payment(s) which become due, to CONTRACTOR hereunder until CONTRACTOR demonstrates compliance with the requirements hereof.
- 7.8 Nothing herein contained shall be construed as limiting, in any way, the extent to which CONTRACTOR may be held responsible for payments of damages to persons or property resulting from CONTRACTOR'S or its subcontractors performance of the work covered under this agreement.

VIII. EXAMINATION OF CONTRACTOR RECORDS

- 8.1 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 test are related to those services performed by the CONTRACTOR for CITY. These examinations shall be conducted at the offices maintained by CONTRACTOR.

- 8.2 All applicable records and accounts of CONTRACTOR, together with all supporting documentation, shall be preserved in Bexar County, Texas by CONTRACTOR throughout the term of this CONTRACT and for twelve (12) months after the termination of this CONTRACT. During this time, CITY may require that any or all of such records and accounts be submitted for audit to CITY or to a Certified Public Accountant selected by CITY. In the event CONTRACTOR fails to furnish CITY any documentation required hereunder within ten (10) days following the written request for same, then CONTRACTOR shall be in default of this CONTRACT.
- 8.3 Should CITY discover errors in internal controls or in record keeping associated with the scope of work covered by this contract, CONTRACTOR shall correct such discrepancies either upon discovery or within a reasonable period of time, not to exceed sixty (60) days after discovery and notification by CITY to CONTRACTOR of such discrepancies. CONTRACTOR shall inform CITY in writing of the action taken to correct such audit discrepancies.

IX. DEFAULT

- 9.1 Should CONTRACTOR neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained, and on CONTRACTOR'S part to be performed or any way observed, and if such neglect or failure should continue for a period of ninety (90) days after receipt by CONTRACTOR of written notice from CITY or DEPARTMENT of such neglect or failure, CITY may terminate this CONTRACT. In the event of such default, CONTRACTOR shall not receive further payments under the terms of this AGREEMENT after said ninety (90) day cure period, and CITY shall be relieved of any further obligations to CONTRACTOR.

X. TERMINATION OF AGREEMENT

- 10.1 This CONTRACT may be canceled or by either party upon written notice, provided such notice specifies an effective date for cancellation of not less than one hundred-eighty (180) calendar days from the date such notice is received. Upon any such termination, all files will remain the property of CITY and at CITY'S request, shall be delivered at no cost to CITY or its designated recipient at the effective date of cancellation. Any CITY funds held in escrow account(s) shall be returned to CITY within thirty (30) calendar days after the effective cancellation date. In addition, CITY shall have the right to terminate this CONTRACT immediately for cause.
- 10.2 Upon completion of this CONTRACT, any uncompleted work previously authorized by CITY, either specifically or as part of a plan, will be paid for, to the extent completed, by CITY in accordance with the provisions of this agreement and shall become the property of CITY.

- 10.3 The rights, duties and responsibilities of CONTRACTOR shall continue in full force and effect during the notice period. After the expiration of the notice period, no rights or liabilities shall arise out of this relationship.

XI. BILLING UPON TERMINATION

- 11.1 Within thirty days after termination of this CONTRACT, CONTRACTOR shall bill CITY for all amounts not previously billed or paid and for which CONTRACTOR is entitled to claim reimbursement from CITY under the terms of this agreement. Subject to the provisions of Articles XV and XVII, CITY shall then pay such amounts to CONTRACTOR. In no event shall CITY be liable for charges submitted to CITY after this thirty-day time period.

XII. CONFLICT OF INTEREST

- 12.1 CONTRACTOR acknowledges that it is informed that the City of San Antonio's City Charter prohibits contracts between CITY and any local public official, such as owner, officer or employee, and that the prohibition extends to an officer and employee of CITY agencies such as CITY owned utilities and CITY boards and commissions, and to contracts involving a business entity in which the official has a substantial interest, as defined by Texas law, if it is reasonably foreseeable that an action of the matter would confer an economic benefit on the business entity. CONTRACTOR certifies, and this CONTRACT is made in reliance thereon, that neither it, its individual officers, employees or agents, nor any person having a substantial interest in this CONTRACT is an officer or employee of CITY or any of its agencies. CONTRACTOR hereby certifies it has tendered to CITY a Disclosure Statement in compliance with the City of San Antonio's Ethics Ordinance.

II. XIII. INDEPENDENT CONTRACTORS

- 13.1 It is expressly understood and agreed by all parties hereto that in performing their services hereunder, CONTRACTOR at all times shall be acting as an independent contractor contracted by CITY and all subcontractors engaged by CONTRACTOR respectively shall be independent contractors of CONTRACTOR. The parties hereto understand and agree that CITY shall not be liable for any claims which may be asserted by any third party occurring in connection with services performed by CONTRACTOR respectively, under this CONTRACT unless any such claims are due to the fault of CITY.
- 13.2 The parties hereto further understand and agree that no party has authority to bind the others or to hold out to third parties that it has the authority to bind the others.

XIV. ENTIRE AGREEMENT

- 14.1 This written CONTRACT embodies the final and entire agreement between the parties hereto and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

XV. SEVERABILITY

- 15.1 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 the remainder of this CONTRACT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein.
- 15.2 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 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.

XVI. LEGAL AUTHORITY

- 16.1 The signer of this CONTRACT, CONTRACTOR and CITY, represents, warrants, assures and guarantees that he has full legal authority to execute this CONTRACT on behalf of CONTRACTOR and/or CITY and to bind CONTRACTOR and/or CITY to all the terms, conditions, provisions and obligations herein contained.

XVII. VENUE AND GOVERNING LAW

- 17.1 Venue of any court action brought directly or indirectly by reason of this CONTRACT shall be in Bexar County, Texas. This CONTRACT 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.

XVIII. CHANGES AND AMENDMENTS

- 18.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by CITY and CONTRACTOR and evidenced by passage of a subsequent CITY ordinance, as to CITY'S approval.
- 18.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable to CONTRACTOR'S services hereunder 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.

XIX. NOTICE

- 19.1 Any notice required or permitted to be given under this CONTRACT shall be sufficient if given in writing and by Certified Mail, Return Receipt Requested, to CITY or to CONTRACTOR at the addresses first set forth below or to any other address of which written notice of change is given.

CITY

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

CONTRACTOR

A & D Tests, Inc.
P.O. Box 21701
Waco, Texas 76702 (and)
KellyUSA, 115 Duncan Drive
San Antonio, Texas 78226

- 19.2 This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, except as otherwise expressly provided for herein.

XX. CAPTIONS

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

XXI. COMPLIANCE WITH SBEDA AND EEO POLICIES

- 21.1 CONTRACTOR hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), African American ("AABE"), and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by CITY. This policy

and its implementation are known as the Small, Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

- 21.2 CONTRACTOR shall implement the plan (hereafter "SBEDA plan") submitted with its proposal under the SBEDA Program for Small, African American, Minority and Women-owned Business Participation in this CONTRACT, thereby meeting the percentages for participation of those groups as submitted in its proposal. CONTRACTOR'S SBEDA plan, as submitted with CONTRACTOR'S proposal, is attached hereto and incorporated herein by reference as a part of Exhibit 1. CONTRACTOR shall be in full compliance with this article by meeting the percentages listed in its proposal no later than 60 days from the date of execution of this CONTRACT, and shall remain in compliance throughout the term of this CONTRACT. CONTRACTOR further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this CONTRACT, as may be approved pursuant to this CONTRACT, which will meet the percentages submitted in its proposal.
- 21.3 CONTRACTOR shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/AABE/WBE'S. Further, such records shall be open to inspection by CITY or its authorized agent at all reasonable times. Should CITY find that CONTRACTOR is not in compliance with this article, CITY shall give notice of non-compliance to CONTRACTOR. CONTRACTOR shall have 15 calendar days after notice of non-compliance to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this CONTRACT, for which this CONTRACT may be terminated in accordance with Article VII.
- 21.4 In all events, CONTRACTOR shall comply with the CITY'S Small Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 100182, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

XXII. PARTIES' REPRESENTATION

- 22.1 The parties acknowledge and represent that this CONTRACT has been jointly drafted by the parties. No provisions or Articles of the CONTRACT will be interpreted or construed against any party solely because the party or its legal counsel drafted such provision or article.

XXIII. LITIGATION EXPENSES

- 23.1 Under no circumstances will the funds received under this contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against CITY or any other public entity.
- 23.2 During the term of this contract, if CONTRACTOR files and/or pursues an adversarial

proceeding against CITY, then, at CITY'S option, this contract and all access to the funding provided for hereunder may terminate.

- 23.3 CONTRACTOR, at CITY'S option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against CITY remains unresolved.
- 23.4 For purposes of this article, "adversarial proceedings" include any cause of action filed by CONTRACTOR in any state or federal court, as well as any state or federal administrative hearing, but does not include alternative dispute resolution proceedings.

EXECUTED in duplicate originals on this the 16th day of SEPTEMBER, 2005.

CITY OF SAN ANTONIO

A & D TESTS, INC.

BY: _____
ROLANDO BONO
CITY MANAGER

BY: J. Williamson
JUDITH WILLIAMSON
PRESIDENT

APPROVED AS TO FORM: _____
City Attorney

LIST OF SUBCONTRACTORS/SUPPLIERS

The Bidder/Proposer, AVD TESTS, INC, as part of the procedure for the submission of bid/proposals on a project known as DRUG TESTING SERVICES (SAPD) submits the following list of subcontractors/suppliers for proposed subcontracting areas (use additional sheets if necessary) to be used in the performance of work to be done on said project.

NAME OF SUBCONTRACTOR/SUPPLIER	SBE-MBE-WBE-AABE CERTIFICATION NUMBER	PERCENT AND DOLLAR AMOUNT OF SUBCONTRACT
<u>AVD TESTS, INC</u>	<u>201052087</u>	<u>90% - 22750</u>
<u>QUEST DIAGNOSTICS</u>	<u>NONE</u>	<u>9% - 2,250</u>
<u>BABER MRO SERVICE</u>	<u>NONE</u>	<u>1% - 250</u>

The following section is to be completed if the contract (Project) is for less than \$200,000. Please list subcontracting solicitations to all SBE-MBE-WBE-AABE contractors for participation on project. If none, explain (exclude successful bidders listed above). Use additional sheets if necessary. **The contractor is expected to solicit participation on subcontracts from available MBE-WBE-AABE-SBEs under this contract.**

NAME OF COMPANY PERFORMING WORK	SBE-MBE-WBE-AABE CERTIFICATION NUMBER	REASON FOR REJECTION

Only companies certified as an MBE, WBE, AABE or SBE by the City of San Antonio or its certifying organization can be applied toward the contracting goals. All MBE-WBE-AABE-SBE subcontractors or suppliers must submit a copy of their certification certificate through the Prime Contractor. Proof of certification must be attached to this form. If a business is not certified, please call the Small Business Program Office at (210) 207-3900 for information and details on how subcontractors/suppliers may obtain certification.

It is understood and agreed that, if awarded a contract by the City of San Antonio, the Contractor will not make additions, deletions, or substitutions to this certified list without consent of the Director of Economic Development and Director of the appropriate contracting department (through the submittal of the Request for Approval of Change to Affirmed List of Subcontractors/Suppliers form).

AFFIRMATION

I HEREBY AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

NAME AND TITLE OF AUTHORIZED OFFICIAL: Judy Williamson

SIGNATURE: Williamson DATE: 8.23.05

List of Subcontractors Rev. 10/12/04

