

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

**TO:** Mayor and City Council

**FROM:** Robert Ojeda, Fire Chief

**SUBJECT:** Ordinance Authorizing the Renewal and Extension of a contract with A & D Tests, Inc.

**DATE:** September 29, 2005

**SUMMARY AND RECOMMENDATIONS**

This ordinance authorizes the City Manager or designated representative to authorize the renewal and extension of a contract not to exceed \$35,000.00 annually, with A & D Tests, Inc. to provide the San Antonio Fire Department with mandatory random testing and reasonable suspicion drug testing. The term is for a one-year period from October 1, 2005 to September 30, 2006, with the option for two one-year extensions, subject to subsequent, annual appropriations.

Staff recommends the approval of this ordinance.

**BACKGROUND INFORMATION**

The Collective Bargaining Agreement (CBA) with the International Association of Fire Fighters Local 624, dated June 3, 2002, authorized the City of San Antonio to perform mandatory random testing for illegal drugs and controlled substances, during each calendar year, beginning October 1, 2003. Additionally, the CBA allows for reasonable suspicion drug testing of all uniform employees and the testing of employees who receive special assignment duty, such as Paramedic, Hazmat and Arson units. Prior to this agreement, the San Antonio Fire Department was only able to perform reasonable suspicion drug testing and testing for employees who received special assignment duty. Under this agreement, the San Antonio Fire Department intends to randomly test, on an annual basis, no less than 15% of all uniformed personnel, to include the Fire Chief.

The City of San Antonio released a Request for Proposal (RFP) seeking competitive bids from vendors in order to comply with the contract. Three (3) proposals were thoroughly evaluated by a committee consisting of the San Antonio Fire Department, San Antonio Police Department, San Antonio Metropolitan Health District - OHC, and the Economic Development staff. Contract negotiations began with A & D Tests, Inc., selected as the most responsive and highest rated proposal, and were completed on September 2, 2003. The contract was executed on September 25, 2003.

The original terms of the contract were from October 1, 2003 to September 30, 2005, with the option for three one-year extensions, subject to subsequent, annual appropriations. A & D Tests, Inc. has met all requirements and standards of the contract and therefore an extension of the contract is recommended. This will be the first extension for this contract.

### **POLICY ANALYSIS**

Approval of this ordinance meets the terms of the Collective Bargaining Agreement, executed on June 3, 2002, authorizing the City of San Antonio to perform mandatory random testing for illegal drugs and controlled substances, during each calendar year, beginning October 1, 2003. Additionally, the CBA allows for reasonable suspicion drug testing of all uniform employees and those employees who receive special assignment duty.

### **FISCAL IMPACT**

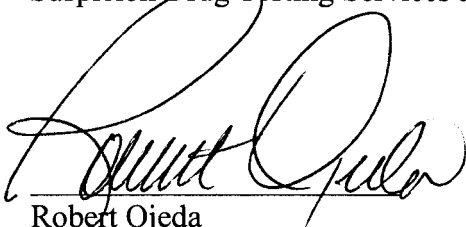
This activity is provided for in the Fire Department's General Fund budget for an amount not to exceed \$35,000.

### **COORDINATION**

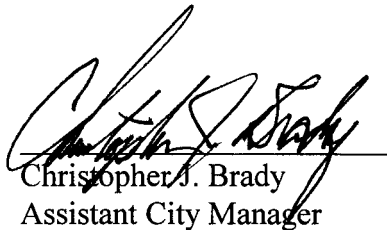
This ordinance has been coordinated with the Office of Management and Budget.

### **SUPPLEMENTARY COMMENTS**

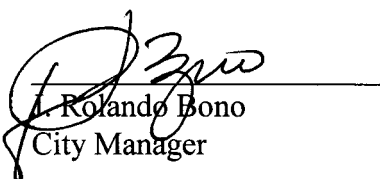
A Discretionary Contracts Disclosure Form and the Contract for Random and Reasonable Suspicion Drug Testing Services are attached.



Robert Ojeda  
Fire Chief



Christopher J. Brady  
Assistant City Manager



L. Rolando Bono  
City Manager

**STATE OF TEXAS** }

**COUNTY OF BEXAR** }

**CONTRACT FOR  
RANDOM AND REASONABLE SUSPICION  
DRUG TESTING SERVICES  
FOR THE SAN ANTONIO FIRE DEPARTMENT**

This CONTRACT is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "CITY") pursuant to Ordinance No. 98212, passed and approved on the 25<sup>th</sup> day of September, 2003, and A & D TESTS, INC. (hereinafter referred to as "CONTRACTOR"), a Texas Corporation licensed to do business in the State of Texas, acting by and through duly authorized officials, both of which maybe referred to herein collectively as the "Parties", 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 Fire 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, seven (7) days per week to perform testing.
- 2.3 CONTRACTOR shall randomly select 15% of the authorized manpower of Department or approximately 220 Fire Fighters annually for testing through the use of a non-discriminatory computerized program. Reasonable suspicion testing shall also be conducted on a case-by-case basis and will be in addition to the approximate 220 tests annually. The Fire Chief shall have the authority to increase the number of Fire Fighters randomly selected in any year so long as adequate funding has been approved by City Council.
- 2.4 CONTRACTOR shall store all testing specimens collected resulting in a positive test result for a period of one (1) year or until all administrative and/or legal disputes have been resolved, which could be a significant time period, possibly years. CITY shall give CONTRACTOR reasonable notice if administrative and/or legal disputes arise, in order for CONTRACTOR to retain the specimen involved.

- 2.5 **CONTRACTOR shall seal and label the specimen, initiate a chain of custody document, and prepare the specimen and accompanying paperwork for shipment to a U.S. Department of Health and Human Services (DHHS) approved laboratory.**
- 2.6 **CONTRACTOR shall subdivide each urine specimen into two bottles labeled as "primary" and "split" specimens. Both bottles shall be sent to a laboratory where only the primary specimen will be tested to determine the presence of illegal, controlled substances.**
- 2.7 **CONTRACTOR shall provide a Medical Review Officer (MRO), whom shall be a qualified physician.**
- 2.8 **CONTRACTOR shall send the split sample, at the request of the employee, to another DHHS-certified laboratory for a second opinion analysis after said employee has been notified by the MRO of positive test results.**
- 2.9 **Pursuant to the provisions of the Collective Bargaining Agreement in effect, CONTRACTOR shall, at the request of the Fire Fighter, accompany the Fire Fighter to an approved physician's office of the Fire Fighter's choice, to have an additional test administered, at the Fire Fighter's expense, within four (4) hours of the initial notification of testing.**
- 2.10 **CONTRACTOR shall allow a selected Fire Fighter up to four (4) hours to provide a specimen and document the circumstances surrounding any unwillingness, failure or inability to provide a specimen.**
- 2.11 **CONTRACTOR shall obtain a urine specimen through direct observation where there is reason to believe, as determined by CONTRACTOR and CITY, that an initial specimen has been altered or substituted.**
- 2.12 **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.**
- 2.13 **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 the possession of illegal drugs.**
- 2.14 **CONTRACTOR shall document and maintain all records in a confidential manner and forward all test results and documentation to the Office of the Fire Chief of the San Antonio Fire Department (hereinafter "DEPARTMENT").**
- 2.15 **CONTRACTOR shall use a U. S. Department of Health and Human Services (DHHS) approved laboratory that is experienced and capable of quality control documentation necessary to meet federal standards, chain of custody, demonstrated technical expertise and proficiency in urinalysis, and shall comply with all requirements of U. S. DHHS.**

2.16 CONTRACTOR shall ensure that both the preliminary and confirmation test is performed at a U. S. Department of Health and Human Services (DHHS) approved laboratory.

2.17 CONTRACTOR shall conduct an initial screening (5 panel) 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

2.18 CONTRACTOR shall consider any concentrations of a drug at or higher than the above levels a positive test result on the initial drug-screening test.

- a. An initial positive test result will not be considered conclusive; rather, it will be Classified as "confirmation pending".
- b. A positive test result on the initial drug-screening test will automatically require a Confirmation drug test be performed.

2.19 CONTRACTOR shall conduct the same five (5) panel urine drug screen test on each confirmation drug test as was conducted on the initial test. The five (5) drugs to be screened and the test cutoff levels in nanogram/milliliter for the confirmation drug tests are as follows:

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

2.20 CONTRACTOR shall ensure sample testing procedures which conform to scientifically accepted analytical methods and procedures, and shall include confirmation of positive test results by gas chromatography/mass spectrometry (GC/MS).

2.21 CONTRACTOR shall expedite the collection of urine from on-duty Fire Fighters and provide a separate private waiting area if collection is performed at a local laboratory.

- 2.22 CONTRACTOR shall deliver all test results in writing to the Office of the Fire Chief within 7 calendar days following specimen collection.
- 2.23 CONTRACTOR shall provide data collection in accordance with State and Federal Regulations. At a minimum, data collected must include patient identifier, age, and race and assay results.
- 2.24 Quality Assurance procedures must be in place to ensure the accuracy and reliability of results for tests performed in connection with this CONTRACT.
- 2.25 CONTRACTOR shall deliver all data to DEPARTMENT at the end of the CONTRACT, or if terminated earlier pursuant to the terms contained herein.
- 2.26 CONTRACTOR shall keep individual laboratory results strictly confidential.
- 2.27 CONTRACTOR shall ensure the confidentiality of all information contained in medical records or other confidential source documents deemed essential for purposes of meeting the objectives of this CONTRACT.
- 2.28 CONTRACTOR shall obtain DEPARTMENT approval for any additional use of information collected pursuant to the terms of this CONTRACT.
- 2.29 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.
- 2.30 Prior to discarding specimens at the end of the one year retention period, CONTRACTOR shall notify CITY which specimens it intends to discard and obtain CITY approval to discard said specimens.
- 2.31 CONTRACTOR shall provide adequate internal control procedures to protect CITY from financial loss, resulting from any aspect of administering this CONTRACT.

### **III. TERM OF CONTRACT**

- 3.1 Unless otherwise terminated as provided for in Article XII, the term of this CONTRACT shall begin October 1, 2003, and terminate September 30, 2005, with three (3) one (1) year renewal options at the sole discretion of the City. An election by the CITY not to renew the CONTRACT shall require no action or notification by the CITY to CONTRACTOR.

#### **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 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 the invoice. Said invoices shall be submitted to CITY via regular mail or by hand delivery or by other means approved by CITY at the following address:

**City of San Antonio, Fire Department  
Attention: District Fire Chief Noel Horan  
115 Auditorium Circle  
San Antonio, Texas 78205**

Payment is deemed to be made on the date of mailing of the check by CITY.

- 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 the following amounts for services indicated:
- |      |  |          |
|------|--|----------|
| I.   | A. Cost per 5-Panel Initial Screening Test<br>(Collected on-site/Fire Department<br>Work Locations)          | \$ 50.00 |
|      | B. Cost per 5-Panel Initial Screening Test<br>(Collected off-site/Local Laboratory)                          | \$ 60.00 |
| II.  | Cost per 5-Panel Confirmation Test   | \$ -0-   |
| III. | Cost per hour for Medical Review Officer to<br>attend and participate in Administrative/Legal<br>Proceedings | \$150.00 |
- 4.5 CONTRACTOR shall be available to attend meetings and make presentations as requested by CITY at no additional unauthorized expense to CITY.

## **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. CONTRACTOR may assign no part of this CONTRACT 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.
- 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.
- 5.5 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.
- 5.6 Each transfer or assignment to which there has been consent, pursuant to section 5.5 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, volunteers, 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 of 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, volunteers, 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 COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, 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 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. CONTRACTOR shall advise CITY in writing within twenty-four (24) hours 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, volunteers, and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.
- 6.3 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.
- 6.4 CONTRACTOR shall advise CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this contract.
- 6.5 Defense Counsel - City shall have the right to selector or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify City, unless City expressly waives such right 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 Agreement. 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.
- 6.6 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.

## 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 Fire 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 the 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 Fire 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:

<u>TYPE</u>	<u>AMOUNT</u>
1. Worker's Compensation Employer's Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (public) Liability Insurance to include coverage for the following:	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
a. Premises operations	
*b. Independent contractors	
c. Products/completed operations	
d. Personal Injury	
e. Contractual liability	
*f. Explosion, collapse, underground	
*g. Broad form property damage, to include fire legal liability	

**\*3. Professional Liability  
(Claims-made form)**

**\$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.**

**\*If applicable**

- 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 require the 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). CONTRACTOR shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided in Section VII herein within ten (10) days of the requested change. CONTRACTOR shall pay any costs incurred resulting from said changes.
- 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 insured's 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;
- 7.5.3 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;
- 7.5.4 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 which is not made pursuant to a request by CITY and shall give such notices not less than thirty (30) days prior to the change, if CONTRACTOR knows of said change in advance, or ten (10) days notice after the change, if the CONTRACTOR did not know of the change in advance. Such 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**  
**San Antonio Fire Department**  
**SAFD Random and Reasonable**  
**Drug Testing Services**  
**115 Auditorium Circle**  
**San Antonio, Texas 78205**

**City of San Antonio**  
**City Clerk's Office**  
**P. O. Box 839966**  
**San Antonio, Texas 78283-3966**  
**- and -**  
**City of San Antonio**  
**Risk Management**  
**SAFD Random and Reasonable**  
**Drug Testing Services**  
**P. O. Box 839966**  
**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'S RECORDS AND RECORDS RETENTION**

- 8.1 CITY reserves the right to conduct examinations without notice, during regular business hours, 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 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 four (4) years 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. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election require Consultant to return said documents to City prior to or at the conclusion of said retention.

- 8.2.1 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.
- 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. OWNERSHIP AND LICENSES

- 9.1 In accordance with Texas law, CONTRACTOR acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of CONTRACTOR pursuant to this Contract shall be the subjects of any copyright or proprietary claim by CONTRACTOR.
- 9.2 The term "local government record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officers or employees pursuant to law including an ordinance, or in the transaction of official business.
- 9.3 CONTRACTOR acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by the contract, will belong

to and be the property of City. ~~CONTRACTOR shall be required to turn over to City, all such records as required by said contract. CONTRACTOR shall not, under any~~ circumstances, release any records created during the course of performance of the contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

- 9.4 In accordance herewith, CONTRACTOR agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

## **X. CERTIFICATIONS**

- 10.1 CONTRACTOR warrants and certifies that CONTRACTOR and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

## **XI. DEFAULT**

- 11.1 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 thirty (30) 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 thirty (30) day cure period, and CITY shall be relieved of any further obligations to CONTRACTOR.

## **XII. TERMINATION OF AGREEMENT**

- 12.1 This CONTRACT may be canceled by either party upon written notice, provided such notice specifies an effective date for cancellation of not less than sixty- (60) 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.
- 12.2 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.
- 12.3 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.**

### **XIII. BILLING UPON TERMINATION**

- 13.1 Within thirty (30) 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 XI and XXII, 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.

### **XIV. CONFLICT OF INTEREST**

- 14.1 CONTRACTOR acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, 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 the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) 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 (10) percent or more of the voting stock or shares of the business entity or ten (10) 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. CONTRACTOR warrants and certifies that it, its officers, employees and agents are neither officers nor employees of the City or any of its agencies such as city owned utilities. CONTRACTOR further certifies it has tendered to CITY a Disclosure Statement in compliance with the City of San Antonio's Ethics Ordinance.

### **XV. PERFORMANCE DEPOSIT**

- 15.1 VENDOR shall furnish CITY a performance deposit in the amount of THIRTY FIVE THOUSAND DOLLARS (\$35,000.00) within ten (10) days from final award of this CONTRACT, which award is subject to City Council approval as evidence by passage of an ordinance. Failure to do so shall be an Event for Cause and will result in termination of the CONTRACT. The parties acknowledge and agree that it is a condition precedent to this CONTRACT to comply with this Section.
- 15.2 The performance deposit shall be in the form of a performance bond conditioned upon the faithful performance and execution of all duties and covenants required under this CONTRACT.
- 15.3 The performance deposit shall be released upon the written consent of CITY two (2) years from the date of expiration of this CONTRACT or completion of any litigation; whichever is later, provided that no Event for Cause has occurred.

- 15.4 ~~The rights reserved to CITY with respect to the performance deposit are in addition to all other rights of CITY, and no action, proceeding or right with respect to the performance deposit shall affect any other right CITY has or may have.~~

#### **XV. INDEPENDENT CONTRACTORS**

- 16.1 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.
- 16.2 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.

#### **XVII. ENTIRE AGREEMENT**

- 17.1 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.
- 17.2 The exhibits attached to this CONTRACT, the Request for Proposal (RFP) issued by CITY (hereinafter exhibit 1) and Proposal for the services to be provided by CONTRACTOR (hereinafter exhibit 2) are incorporated herein and shall be considered a part of this CONTRACT for the purposes stated herein, except that if there is a conflict between an exhibit and a provision of this CONTRACT, the provision of this CONTRACT shall prevail over the exhibit.

#### **XVIII. SEVERABILITY**

- 18.1 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.

- 18.2 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.

#### **XIX. LEGAL AUTHORITY**

- 19.1 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, condition, provisions and obligations herein contained.

#### **XX. VENUE AND GOVERNING LAW**

- 20.1 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.

#### **XXI. CHANGES AND AMENDMENTS**

- 21.1 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.
- 21.2 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 Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

#### **XXII. NOTICE**

- 22.1 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.

## **AN ORDINANCE 9 8 2 1 2**

**AUTHORIZING THE CITY MANAGER, OR HER DESIGNEE, TO EXECUTE A CONTRACT, IN AN AMOUNT NOT TO EXCEED \$35,000.00 ANNUALLY, WITH A & D TESTS, INC., TO PROVIDE THE SAN ANTONIO FIRE DEPARTMENT WITH RANDOM AND REASONABLE SUSPICION DRUG TESTING SERVICES FROM OCTOBER 1, 2003 TO SEPTEMBER 30, 2005, WITH THE OPTION FOR THREE ONE-YEAR EXTENSIONS, SUBJECT TO ANNUAL APPROPRIATIONS.**

\*\*\*\*\*

**WHEREAS**, pursuant to the terms of the Collective Bargaining Agreement between the City of San Antonio and Local 624 International Association of Fire Fighters dated June 3, 2002, the City is authorized to perform random and reasonable suspicion drug testing for illegal drugs and controlled substances on Fire Fighters of all ranks, including the Chief; and

**WHEREAS**, on June 11, 2003, a Request for Proposals was issued for qualified professional agencies to provide random and reasonable suspicion drug testing services to the San Antonio Fire Department which received no response; and

**WHEREAS**, on July 21, 2003, a second Request for Proposals was issued for qualified professional agencies to provide random and reasonable suspicion drug testing services to the San Antonio Fire Department; and

**WHEREAS**, a question and answer session was held on August 6, 2003, attended by representatives of several interested companies; and

**WHEREAS**, as a component of the process, a five member Drug Testing Contract Review Committee (the "Review Committee") was organized, which was comprised of members from the San Antonio Fire Department, the San Antonio Police Department, and the San Antonio Metropolitan Health District – OHC; and

**WHEREAS**, three proposals from interested companies were received on August 22, 2003, and upon careful review, A & D Tests, Inc. was selected as the most responsive and highest rated proposal; and

**WHEREAS**, on September 2, 2003, the review committee recommended to Chief Ojeda that A & D Tests, Inc. be awarded the contract to provide random and reasonable suspicion drug testing services to the San Antonio Fire Department; and

**WHEREAS**, it is the recommendation of the San Antonio Fire Department that A & D Tests, Inc. be awarded the professional services contract for the provision of random and reasonable suspicion drug testing services to the San Antonio Fire Department for the period commencing October 1, 2003 through September 30, 2005 with three (3) one-year renewal options, at the sole discretion of City Council and subject to subsequent, annual appropriations; and

**WHEREAS**, the amount of the contract shall not to exceed \$35,000.00, annually; **NOW THEREFORE**:

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

**SECTION 1.** The City Manager, or her designee, is hereby authorized to execute the contract with A & D Tests, Inc., to provide random and reasonable suspicion drug testing services to the San Antonio Fire Department, for an amount not to exceed \$35,000.00 annually, for the period from October 1, 2003 through September 30, 2005. A copy of the Contract for Random and Reasonable Suspicion Drug Testing Services, in substantially final form, is attached hereto and incorporated herein as Attachment I.

**SECTION 2.** The authority granted above to the City Manager, or her designee, is authorized for a thirty (30) day period. In the event a final agreement, in substantially the form as attached, cannot be reached within this time period, approval of the agreement shall be subject to subsequent City Council approval.

**SECTION 3.** Funds in the amount of \$35,000.00 are authorized to be encumbered in Fund 11-000000 (General Fund) in Index Code 634170 entitled "Fees to Professional-Drug Testing" and are made payable to A & D Tests, Inc. for the period from October 1, 2003 through September 30, 2004 in budget year 2003/2004.

**SECTION 4.** Funds for subsequent periods are contingent upon annual budget appropriations.

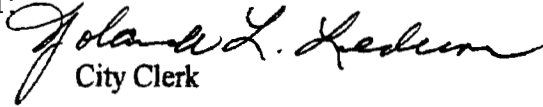
**SECTION 5.** This Ordinance shall take effect on October 1, 2003.

PASSED AND APPROVED this 25<sup>th</sup> day of September, 2003.

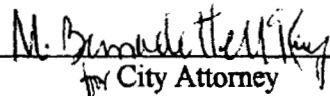
  
M A Y O R

EDWARD D. GARZA

ATTEST:

  
City Clerk

APPROVED AS TO FORM:

  
City Attorney

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

**CONTRACTOR**  
A & D Tests, Inc.  
Attn: Judith Williamson  
115 Duncan Drive, Kelly USA  
San Antonio, TX 78226-1816

- 22.2 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.

### **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 conditions of this CONTRACT.

### **XXIV. COMPLIANCE WITH SBEDA AND EEO POLICIES**

- 24.1 CONTRACTOR is hereby advised that it is the policy of the CITY OF SAN ANTONIO that Small, Minority or Woman-owned Business Enterprises (SBEDA) shall have the maximum practical opportunity to participate in the performance of public contracts. CONTRACTOR agrees that CONTRACTOR will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. CONTRACTOR further agrees that CONTRACTOR will abide by applicable terms and provisions of CITY'S Non-Discrimination Policy, CITY'S Small, Minority or Woman-owned Business Advocacy Policy and CITY's Equal Opportunity Affirmative Action policy, these policies being available in CITY's Department of Economic Development, Division of Internal Review and the CITY Clerk's Office.
- 24.2 CONTRACTOR agrees that if material deficiencies in any aspect of its Small Business Economic Development Advocacy utilization plan as set out in its proposal are found as a result of a review or investigation conducted by CITY'S Department of Economic Development, CONTRACTOR will be required to submit a written report to CITY's Department of Economic Development. CONTRACTOR will also be required to submit a supplemental Good Faith Effort Plan (GFEP) indicating efforts to resolve any deficiencies. A denied GFEP, by CITY's Department of Economic Development, will constitute failure to satisfactorily resolve any deficiencies by CONTRACTOR. Failure to obtain an approved GFEP within ninety- (90) days of initial denial shall constitute a default and result in a penalty on CONTRACTOR of \$1,000 per day as liquidated damages for the default until all deficiencies are resolved. Failure to cure all deficiencies within another ninety (90) days of the date the penalty is initially assessed constitute a further (additional) condition of default by CONTRACTOR and which can, at the option of the Director, result of forfeiture of the entirety of this CONTRACT.

## XXV. - PARTIES' REPRESENTATION

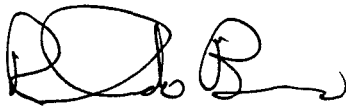
- 25.1 The parties acknowledge and represent that the parties have jointly drafted this CONTRACT. No provisions or Articles of the CONTRACT will be interpreted or construed against any party solely because the party or its legal counsel drafted such provision or Article.

## XXVI. LITIGATION EXPENSES


- 26.1 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.
- 26.2 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.
- 26.3 CONTRACTOR, at CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against CITY remains unresolved.
- 26.4 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.

IN WITNESS OF WHICH THIS CONTRACT FOR RANDOM AND REASONABLE  
SUSPICION DRUG TESTING SERVICES FOR THE SAN ANTONIO FIRE  
DEPARTMENT HAS BEEN EXECUTED on this the 25<sup>th</sup> day of  
SEPTEMBER, 2003.

CITY OF SAN ANTONIO

BY:   
TERRY M. BRECHTEL  
CITY MANAGER

A & D TESTS, INC.

BY:   
JUDITH WILLIAMSON  
PRESIDENT

APPROVED AS TO FORM:

  
for City Attorney

## 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 entity<sup>1</sup> that is a party to the discretionary contract:

A & D Tests, Inc.

(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:

<sup>1</sup> 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:

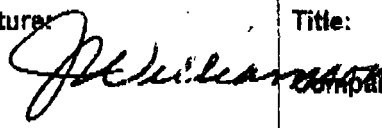
By Whom Made:	To Whom Made:	Amount:	Date of Contribution:

**(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 question<sup>2</sup> 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: Company or D/B/A:	Date: 9-23-05
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<sup>2</sup> 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.