

AN ORDINANCE

2008-10-02-0887

APPROVING A CONTRACT WITH A & D TESTS, INC., IN AN AMOUNT UP TO \$20,000.00 ANNUALLY, TO PROVIDE THE SAN ANTONIO FIRE DEPARTMENT WITH RANDOM AND REASONABLE SUSPICION DRUG TESTING SERVICES FROM OCTOBER 1, 2008, TO SEPTEMBER 30, 2011, WITH OPTIONAL EXTENSIONS.

WHEREAS, pursuant to the provisions of the current collective bargaining agreement with the International Association of Fire Fighters Local 624, the San Antonio Fire Department is authorized to conduct random and reasonable suspicion drug testing of its sworn personnel; and

WHEREAS, A & D Tests, Inc. is willing and able to provide this service; and

WHEREAS, it is necessary to enter into a contract with A & D Tests, Inc. for an amount not to exceed \$20,000.00 annually; and

WHEREAS, said contract is for an initial term of three years, from October 1, 2008, to September 30, 2011, with two optional one-year extensions; **NOW THEREFORE:**

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

SECTION 1. The City Manager and her designee are hereby authorized to execute a contract with A & D Tests, Inc., in an amount not to exceed \$20,000.00 annually, to provide the San Antonio Fire Department with random and reasonable suspicion drug testing services from October 1, 2008, to September 30, 2011, with optional extensions, so long as the terms and conditions of said contract are substantially the same as those contained in the attached contract. Should the parties be unable to negotiate and execute a contract within twenty-five days of the effective date of this ordinance, the authorization to execute said contract must again be obtained by City Council.

SECTION 2. Funding for this ordinance is available in Fund 11001000 (General Fund), Cost Center 2001030001 (Personnel Services), General Ledger 5201040 (Fees to Professional Contractors) as part of the FY09 Budget. Payment not to exceed \$20,000.00 is authorized to A & D Tests, Inc. and should be encumbered with a purchase order.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance shall take effect immediately if passed by eight (8) affirmative votes; otherwise, this Ordinance shall take effect ten (10) days from the date of passage hereof.

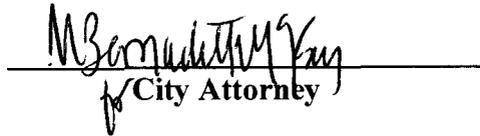
PASSED AND APPROVED this 2nd day of October, 2008.


M A Y O R

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney



Request for
**COUNCIL
ACTION**

City of San Antonio



Agenda Voting Results - 23

Name:	5, 6, 8, 11, 13, 14, 15, 16, 18, 20, 23, 24, 25, 27, 28, 30B
Date:	10/02/2008
Time:	10:40:42 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving a contract with A & D Tests, Inc., in an amount up to \$20,000.00 annually, to provide the San Antonio Fire Department with random and reasonable suspicion drug testing services from October 1, 2008 to September 30, 2011, with optional extensions. [Erik J. Walsh, Assistant City Manager; Charles N. Hood, Fire Chief]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				x
Lourdes Galvan	District 5	x					
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7	x					
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				

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

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This CONTRACT is entered into by the City of San Antonio, a Texas Municipal Corporation ("CITY") pursuant to Ordinance No. _____, passed and approved on the 2nd day of October, 2008, and A & D Tests, Inc. ("CONTRACTOR"), a Texas Corporation licensed to do business in the State of Texas, ("PARTIES"), by and through its President, Judy Williamson.

I. PURPOSE

- 1.1 This CONTRACT states the terms and conditions under which CONTRACTOR performs services as the random and reasonable suspicion drug testing service of CITY's Fire Department ("Department").

II. SCOPE OF SERVICES

- 2.1 CONTRACTOR must provide random and reasonable suspicion drug testing services ("testing") during the term of this CONTRACT.
- 2.2 CONTRACTOR must be available twenty-four (24) hours per day, seven (7) days per week to perform testing.
- 2.3 CONTRACTOR must randomly select 30 authorized personnel per month or approximately 360 Fire Fighters annually for testing through the use of a random computerized program. Reasonable suspicion testing will also be conducted on a case-by-case basis, in addition to the approximate 360 tests annually. The Fire Chief may increase the number of Fire Fighters randomly selected in any year if funding has been approved by City Council.
- 2.4 CONTRACTOR must 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 will notify CONTRACTOR if administrative and/or legal disputes arise, so that CONTRACTOR may retain the specimen involved.

- 2.5 CONTRACTOR must 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 must 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 must provide a Medical Review Officer (MRO), who must be a qualified physician.
- 2.8 CONTRACTOR must send the split sample, at the request of the employee, to another DHHS-certified laboratory for a second opinion analysis after the employee has been notified by the MRO of positive test results.
- 2.9 CONTRACTOR must, at the request of the employee, accompany him or her to an approved physician's office of the employee's choice, to have an additional test administered, at the employee's expense, within four (4) hours of the initial notification of testing.
- 2.10 CONTRACTOR must allow a selected employee 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 must 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 must 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 must 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 dishonesty or the possession of illegal drugs.
- 2.14 CONTRACTOR must document and maintain all records in a confidential manner and forward all test results and documentation to the Office of the City's Fire Chief.
- 2.15 CONTRACTOR must 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 must comply with all requirements of U. S. DHHS.
- 2.16 CONTRACTOR must 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 must conduct an initial screening (5 panel) urine test for the listed drugs at the listed levels:
- | | |
|-------------------|------------|
| Marijuana | 50ng/ml |
| Cocaine | 300ng/ml |
| Opiate metabolite | 2,000ng/ml |
| Phencyclidine | 25ng/ml |
| Amphetamines | 1,000ng/ml |
- 2.18 CONTRACTOR must consider any concentrations of a drug at or higher than the above levels a positive test result 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 a Confirmation drug test to be performed.

2.19 CONTRACTOR must 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	15 ng/ml
Cocaine metabolite	150 ng/ml
Opiates:	
a. Morphine	2,000 ng/ml
b. Codeine	2,000 ng/ml
c. 6-Acetylmorphine	10 ng/ml
Phencyclidine	25 ng/ml
Amphetamines:	
a. Amphetamines	500 ng/ml
b. Methamphetamine	500 ng/ml

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

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

2.22 CONTRACTOR must deliver all test results in writing to the Office of the City's Fire Chief within 7 calendar days following specimen collection.

2.23 CONTRACTOR must 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 must deliver all data to DEPARTMENT at the end or termination date of the CONTRACT.

- 2.26 CONTRACTOR must keep individual laboratory results strictly confidential.
- 2.27 CONTRACTOR must 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 must obtain DEPARTMENT approval for any additional use of information collected pursuant to the terms of this CONTRACT.
- 2.29 If at any time during the term of this CONTRACT, a personnel vacancy unfavorably impacts the administration of this CONTRACT, a competent replacement must be provided immediately.
- 2.30 Prior to discarding specimens at the end of the one year retention period, CONTRACTOR must notify CITY which specimens it intends to discard and obtain CITY approval.

III. TERM OF CONTRACT

- 3.1 This CONTRACT shall begin October 1, 2008, and end September 30, 2011, with two (2) one (1) year renewal options at the sole discretion of the City.

IV. COMPENSATION TO CONTRACTOR

- 4.1 The CITY agrees to pay CONTRACTOR an amount not to exceed TWENTY THOUSAND DOLLARS (\$20,000.00) annually, upon valid invoices sent to CITY from CONTRACTOR. CITY agrees to pay CONTRACTOR's invoices within 30 days of CITY's receipt of the invoice. Said invoices must 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 the CITY mails a check.

- 4.2 Only the actual cost, specified in the approved contract will be paid for any subcontractor services.
- 4.3 The 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 will be paid the following amounts for services indicated:

PRICING SCHEDULE

- A. Cost per 5-Panel Initial Screening Test
(Collected on site at Fire Department
Work Locations): \$ _50.00_

- B. Cost per 5-Panel Confirmation Test \$ _included
with screen

- C. Cost per hour for Medical Review
Officer to attend and participate in
Administrative/Legal proceedings: \$ _500.00_

- 4.5 CONTRACTOR must attend meetings and make presentations as requested by CITY at no additional expense to CITY.

V. ASSIGNMENT AND SUBCONTRACTING

- 5.1 This is a professional services CONTRACT. The rights, duties, responsibilities and obligations of CONTRACTOR are not assignable without the express written consent of CITY. CONTRACTOR may not assign any part of this CONTRACT without approval of CITY, through a duly authorized ordinance, passed and approved by CITY Council.
- 5.2 No subcontractors or other service providers may be hired by CONTRACTOR in relation to this CONTRACT without specific written approval from CITY.

- 5.3 Work or services under this contract may 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 will be the responsibility of CONTRACTOR.
- 5.4 CITY will not 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.

VI. INSURANCE

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

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

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal injury e. Contractual Liability	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. 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.

D) Respondent agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Respondent herein, and provide a certificate of insurance and endorsement that names the Respondent and the City as additional insureds. Respondent shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor.

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

- E) The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the 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). Respondent 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 below within 10 days of the requested change. Respondent shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: San Antonio Fire Department
P.O. Box 839966
San Antonio, Texas 78283-3966

- F) Respondent agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Respondent shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Respondent's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- H) In addition to any other remedies the City may have upon Respondent's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Respondent to stop work hereunder, and/or withhold any payment(s) which become due to Respondent hereunder until Respondent demonstrates compliance with the requirements hereof.
- I) Nothing herein contained shall be construed as limiting in any way the extent to which Respondent may be held responsible for payments of damages to persons or property resulting from Respondent's or its subcontractors' performance of the work covered under this Agreement.
- J) It is agreed that Respondent's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

VII. INDEMNIFICATION

- 7.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers, and representatives of the 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 the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, contractor 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 Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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 the CITY in writing of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this Agreement.

- 7.2 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONTRACTOR 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 CONTRACTOR fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR 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.

- 7.3 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, 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 CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

VIII. EXAMINATION OF CONTRACTOR'S RECORDS AND RECORDS RETENTION

- 8.1 CITY reserves the right to examine without notice, during regular business hours, of the files, books and records related to this contract (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, related to services performed by CONTRACTOR for CITY, 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. The City must have access to any and all such documents at any and all times, as deemed necessary by City, during the retention period. City may, at its election require Consultant to return these

documents to City prior to or at the conclusion of said retention.

- 8.2.1 Consultant must notify City, immediately, in the event Consultant receives any requests for information from a third party, pertaining to the documentation and records of this contract. 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" means 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, under, produced in the course of the work required by the contract, will belong to the City. CONTRACTOR shall be required to turn over to City, all such records as required by said contract.

CONTRACTOR may 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 CONTRACTOR agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and their ownership, access and retention.

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 established by all other authoritative bodies, 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 which continues for a period of thirty (30) days after receipt by CONTRACTOR of written notice from CITY or DEPARTMENT, the CITY may terminate this CONTRACT. In the event of default, CONTRACTOR will not receive further payments under the terms of this AGREEMENT after the 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, of not less than sixty- (60) calendar days from the date such notice is received. Upon termination, all files will remain the property of CITY and at CITY's request, must 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) must be returned to CITY within thirty days after the effective cancellation date. In addition, CITY has the right to terminate this CONTRACT immediately for cause.

- 12.2 Upon completion of this CONTRACT, any uncompleted work previously authorized by CITY, will be paid for, to the extent completed, by CITY as provided in this agreement and shall become the property of CITY.
- 12.3 The rights, duties and responsibilities of CONTRACTOR will continue in full force and effect during the termination 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 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 BOND

- 15.1 If selected, Respondent will be required to provide a performance bond made payable to the City, executed by a corporate surety acceptable to City who is licensed pursuant to the Texas Insurance Code and listed on the United States Department of the Treasury's Listing of Approved Sureties (Dept Circular 570) in the amount of \$20,000. Said bond must be in a form acceptable to City. Said bond shall further provide that the surety shall indemnify the Obligee for all damages or losses resulting from the Principal's default. Said bond shall further guarantee the Principal's performance of all terms and obligations under the contract awarded. Said bond must have attached thereto a Power of Attorney as evidence of the authority of the person executing the bond to bind the surety. The bond must clearly and prominently display on the bond or on an attachment to the bond: (1) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or (2) the toll-free telephone number maintained by the Texas Department of Insurance under Article 1.35D, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.
- 15.2 The bond must be executed and delivered to City prior to commencement of work under the contract awarded pursuant to this RFP.

XVI. INDEPENDENT CONTRACTORS

- 16.1 Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and contractors; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and contractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint

venturers between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind the City.

XVII. ENTIRE AGREEMENT

- 17.1 This written CONTRACT embodies the final and entire agreement between the parties 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 (Exhibit 1) and Proposal for the services to be provided by CONTRACTOR (Exhibit 2) are incorporated in this contract and will be considered a part of this CONTRACT. If there is a conflict between an exhibit and a provision of this CONTRACT, this CONTRACT prevails 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 that such invalidity, illegality or unenforceability not affect any other clause or provision and the remainder of this CONTRACT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained in the contract.
- 18.2 The parties agree that in lieu of any clause or provision of this CONTRACT that is invalid, illegal or unenforceable, there will 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 signers of this CONTRACT, CONTRACTOR and CITY, warrant that they have full legal authority to execute this CONTRACT and to bind

CONTRACTOR 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 lies only in Bexar County, Texas. This CONTRACT must be construed under the laws of the State of Texas, and all obligations of the parties are performable in Bexar County, Texas.

XXI. CHANGES AND AMENDMENTS

- 21.1 Any alterations, additions, or deletions to this contract must 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 Changes in local, state and federal rules, regulations or laws applicable to CONTRACTOR's services that may occur during the term of this Agreement will be automatically incorporated into this Agreement without written amendment, and become a part of this contract 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.

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

CONTRACTOR

22.2 This CONTRACT is binding upon and inure to the benefit of the parties

hereto and their respective heirs, executors, administrators, successors and their assigns.

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. SBEDA

- 24.1 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 the City. This policy and its implementation are known as the Small, Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").
- 24.2 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 Agreement, 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 Exhibit _____. 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 Agreement, and shall remain in compliance throughout the term of this Agreement. Contractor further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this Agreement, as may be approved pursuant to this Agreement, which will meet the percentages submitted in its proposal.
- 24.3 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 Agreement, for which this Agreement may be terminated in accordance with Article VII. Termination.

24.4 In all events, Contractor shall comply with the City's Small Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 2007-04-12-0396, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

XXV. PARTIES' REPRESENTATION

25.1 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.

EXECUTED on this the _____ day of _____, _____.

CITY OF SAN ANTONIO

BY: SHERYL L. SCULLEY
CITY MANAGER

BY: JUDY
WILLIAMSON
PRESIDENT
A & B TESTS,
INC.

APPROVED AS TO FORM:

City Attorney



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 23
Council Meeting Date: 10/2/2008
RFCA Tracking No: R-3846

DEPARTMENT: SAFD

DEPARTMENT HEAD: Charles N. Hood

COUNCIL DISTRICT(S) IMPACTED:
City Wide

SUBJECT:
Random And Reasonable Suspicion Drug Testing Services

SUMMARY:
This ordinance authorizes the City Manager or her designated representative to execute a contract not to exceed \$20,000.00, annually, with A & D Tests, Inc. to supply the San Antonio Fire Department (SAFD) with mandatory random testing and reasonable suspicion drug testing. The term of the contract is from October 1, 2008 to September 30, 2011, with the option for two one-year extensions, subject to subsequent, annual appropriations. This action will be effective immediately with the passage of eight (8) affirmative City Council votes.

BACKGROUND INFORMATION:
The Collective Bargaining Agreement (CBA) with the Local 624 International Association of Fire Fighters, 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, 2008. 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 employees who received special assignment duty.

The current contract expired and the City of San Antonio was required to release a new Request for Proposal (RFP) seeking competitive bids from vendors in order to comply with the contract. The RFP was published August 14, 2008 and closed August 29, 2008. Only one proposal was received. It was from A & D Tests, Inc.

The proposal was thoroughly evaluated by a committee consisting of the San Antonio Fire Department and San Antonio Police Department. Evaluation criteria consisted of 25% for Qualifications, 35% for Proposed Plan, 20% for SBEDA and 20% for Proposed Price.

On an annual basis approximately 360 firefighters of all ranks, including the Fire Chief, will be randomly tested.

ISSUE:

The San Antonio Fire Department is authorized through the Collective Bargaining Agreement between the City of San Antonio and Local 624, International Association of Fire Fighters to perform random drug testing to ensure efficiency and safety in the work place that is necessary and required to carry out the mission of the Department.

ALTERNATIVES:

If a contract is not executed for random drug testing, the City of San Antonio will be in violation of the current Collective Bargaining Agreement that was approved by ordinance #2007-05-31-0648.

FISCAL IMPACT:

All expenditures are budgeted in the fiscal year 2008-2009 budget.

RECOMMENDATION:

Staff recommends approval of this ordinance to award the contract to A & D Tests, Inc. for Random and Reasonable Suspicion Drug Testing Services.

ATTACHMENT(S):

File Description	File Name
Voting Results	
Ordinance/Supplemental Documents	200810020887.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Carl Wedige Assistant Chief SAFD

APPROVED FOR COUNCIL CONSIDERATION:

Erik Walsh Assistant City Manager