

**CONTRACT FOR
RANDOM AND POST ACCIDENT DRUG TESTING SERVICES
FOR THE SAN ANTONIO FIRE DEPARTMENT**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through its City Manager or designee, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 20____ and **A&D Tests, Inc.**, acting by and through its President (“Contractor”). City and Contractor both of which may be referred to herein collectively as the “Parties”.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**ARTICLE I
DEFINITIONS**

As used in this Agreement, the following terms shall have meanings as set out below:

- 1.1 “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2 “Contractor” is defined in the preamble of this Agreement and includes its successors.
- 1.3 “Fire Chief” shall mean the Fire Chief of the San Antonio Fire Department or designee.
- 1.4 “Fire Fighter” or “Employee” means any full time, permanent, paid employee of the San Antonio Fire Department who has been hired in substantial compliance with Chapter 143 of the Local Government Code.
- 1.5 “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 officials or employees pursuant to law including an ordinance, or in the transaction of official business.

- 1.6 “SAFD” or “Fire Department” shall mean the San Antonio Fire Department.

ARTICLE II

TERM

- 2.1 Initial Term. Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence upon the effective date of the ordinance awarding the contract or April 1, 2024, whichever is later. This contract shall terminate on December 31, 2027.
- 2.2 Renewals. At City’s option, this Agreement may be renewed under the same terms and conditions for two (2), additional one (1) year periods. Renewals shall be in writing and signed by Fire Chief or designee, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funding therefor. An election by City not to renew the agreement shall require no action or notification by the City to Contractor.
- 2.3 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any additional contract period beyond the initial term set forth in 2.1 is subject to and contingent upon subsequent appropriation.

ARTICLE III

SCOPE OF SERVICES

- 3.1 Contractor agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation to Contractor.

3.2 GENERAL REQUIREMENTS

- 3.2.1 Contractor covenants and agrees to perform all services described in this Agreement in a good and workmanlike manner to ensure accuracy and timeliness.
- 3.2.2 Contractor agrees to have in its employ, at all times and at its own expense, a sufficient number of capable and qualified personnel to provide testing services.
- 3.2.3 Contractor shall provide testing services specified 24 hours per day, seven (7) days per week.
- 3.2.4 Contractor shall provide post-accident, reasonable suspicion and random drug and alcohol testing.

- 3.2.5 Contractor shall utilize a U.S. Department of Health and Human Services (DHHS) certified laboratory that is experienced and capable of completing and producing quality control documentation necessary to meet federal standards when collecting urine specimens. The chain of custody procedures and documentation necessary to meet federal standards will ensure specimen collection, specimen security, proper identification, and integrity are not compromised.
- 3.2.6 Contractor shall randomly select Fire Fighters, through the use of a non-discriminatory computerized program that has been certified as non-discriminatory by an independent firm hired by the City. The computer program shall be designed to ensure that every employee is eligible to be randomly selected; however, no employee may be tested more than four (4) times in any twelve (12) month period.
- 3.2.7 Contractor shall provide a Medical Review Officer (MRO), who is a qualified physician.
- 3.2.8 Contractor shall have collectors that are trained and familiar with the Mandatory Guidelines for Federal Workplace Drug Testing Programs established by DHHS and published in the Federal Register.
- 3.2.9 Contractor shall have and maintain an established business location within the Bexar County limits to provide these services.
- 3.2.10 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.
- 3.2.11 Contractor shall ensure that no employee is used in the collection or handling of an unsealed specimen has been convicted of a felony or misdemeanor crime involving dishonesty or the possession of illegal drugs.

3.3 THRESHOLD LEVEL TESTING

- 3.3.1 Initial and Confirmatory Test. Contractor shall use the initial and confirmatory test cutoff levels and screen for all the drugs that are listed in the Mandatory Guidelines for Federal Workplace Drug Testing Programs established by the U.S. Department of Health and Human Services (DHHS) and published in the Federal Register. In accordance therewith, the following levels shall be determinative in any drug testing administered under this Agreement:
 - a) In January of each calendar year, the list of additional drugs is subject to change and Contractor shall accommodate those adjustments which will be included or removed from the drug testing panel as drugs are authorized or deauthorized for use by Fire Department employees in the course and scope of their duties and for which testing protocols exist.
 - b) Cut-off levels for any additional drugs will be established by the DHHS-certified testing laboratory.

- c) Concentrations of a drug at or higher than the above levels shall be considered a positive test result on the **initial** drug screening test.
 - i. An initial positive test result will not be considered conclusive; rather, it will be classified as “confirmation pending.”
 - ii. A positive test result on the initial drug-screening test will automatically require a confirmation drug test be performed.
- d) Concentrations of a drug at or higher than the above levels shall be considered a positive test result on the **confirmation** drug screening test

3.3.2 Alcohol Testing. Contractor shall conduct alcohol testing by a Breath Alcohol Technician (BAT) using an Evidential Breath Testing Device (EBT). Alcohol testing procedure shall be as follows:

- a) The employee will provide a breath sample. If the employee’s alcohol concentration is greater than or equal to .04, a second confirmation test will be performed in accordance with established EBT protocol.
- b) An employee’s failure or refusal to provide a breath sample will result in a determination that the employee’s alcohol concentration is greater than or equal to .04.

3.3.3 Specimen Collection. Contractor shall:

- a) Obtain a complete Pre-testing Consent form from the employee each time a test is conducted.
- b) Collect the urine specimens in a private location at any of the Fire Department’s facilities in accordance with the policy and/or protocol established by the testing laboratory.
- c) Obtain a urine specimen through direct observation where there is a reason to believe, as determined by Contractor and City, that an initial specimen has been altered or substituted.
- d) Allow the 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.
- e) Contact the Medical Review Officer (MRO), for instructions in the event of any unwillingness, failure or inability to provide a specimen.
- f) Seal and label the specimen, initiate a chain of custody document, and prepare the specimen and accompanying paperwork for shipment to a DHHS approved laboratory to perform the urinalysis for drug detection.
- g) Subdivide each urine specimen into two bottles labeled, as “primary” and “split” specimens.
- h) Send both bottles to the certified laboratory where only the primary specimen will be tested to determine the presence of illegal, controlled substances.
- i) If requested by the employee within 72 hours of the MRO notifying the employee of a positive test result, Contractor must send the split sample to another DHHS-certified laboratory for a second opinion analysis.
- j) At the request of the employee, Contractor shall accompany the employee to a 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.

- k) Provide results of any such test taken at the employee's expense to the City only if the employee chooses to release the results to the City.
- l) Store the primary and split specimen for a period of at least one (1) year and until all administrative and/or legal disputes have been resolved, which could be for a significant time period, possibly years.
- m) Sample testing procedures shall conform to scientifically accepted analytical methods and procedures and shall include confirmation of positive test results by gas chromatography/mass spectrometry (GC/MS).

3.4 POST-ACCIDENT AND REASONABLE SUSPICION TESTING

- 3.4.1 Contractor shall be available to conduct post-accident and reasonable suspicion drug and alcohol testing based on the on requirements in section 3.3, Threshold Level Testing, on a case-by-case basis at the location specified by SAFD within one hour of notification.

3.5 RANDOM DRUG TESTING

Contractor shall:

- a) Be independent and certified to operate a random computerized program to ensure one hundred (100%) of Fire Fighters or all ranks, including the Fire Chief or designee, are not tested more than four (4) times in a twelve (12) month period.
- b) Provide documentation certifying the computerized program utilized to select personnel for testing is random and non-discriminatory.
- c) On a quarterly basis, provide a quarterly report for the preceding quarter indicating the number of bargaining unit employees tested along with whether any tests were second, third or fourth tests for the 12-month period.
- d) Be available to conduct random drug testing based on the on requirements in section 3.3, Threshold Level Testing, within two (2) hours of notification.
- e) Document and maintain all records in a confidential manner and must forward all test results to the Office of the City's Fire Chief or designee within seven (7) days following the specimen collection.

3.6 CONFIDENTIALITY AND DATA

Contractor shall:

- a) Ensure all records pertaining to the department required drug and/or alcohol tests shall remain confidential to the extent allowed by law, unless offered in evidence in a disciplinary appeal.
- b) Keep individual laboratory results strictly confidential.
- c) Ensure the confidentiality of all information contained in all records or other confidential source documents deemed essential for purposes of meeting the objectives of this contract.
- d) 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.
- e) Store all testing specimens collected resulting in a positive test result for a period of at least one year and 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.

- f) Contact City prior to discarding specimens at the end of the one-year retention period, Contractor must notify City which specimens it intends discard and obtain City approval.
- g) Ensure 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 termination of this Contract. During this time, City may require that any or all 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, Contractor 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 Contractor to return these documents to City prior to or at the conclusion of said retention.
- h) Deliver all data to SAFD at the end or upon termination of the Contract.

3.7 AUDITING

- 3.7.1 Contractor shall allow City or its designee to audit all files maintained by the Contractor pertaining to this contract without notice. City reserves the right to examine without notice, during regular business hours, the files, books, and records related to this Agreement (including such items as specimen maintenance, contracts, paper correspondence, 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 services performed by Contractor for City, at the offices maintained by Contractor.
- 3.7.2 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.

3.8 INVOICING

Contractor shall provide a website or other means for City's retrieval of invoices by instantaneous download. Analysis of historical usage and billing data should also be readily available to City.

ARTICLE IV
COMPENSATION TO CONTRACTOR

- 4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Fire Chief or designee, of all services and activities set forth in this Agreement, City agrees to pay Contractor in accordance with the following:

Item I: Random Drug Testing Services		
1	Initial Screening Test	Included; No Cost to City
2	Confirmatory Test	\$60 per test
3	Medical Officer Review (attends or participates)	\$30 per hour
Item II: Reasonable Suspicion and Post-Accident Testing		
1	Initial Screening Test	Included; No Cost to City
2	Confirmatory Test	\$60 per test
3	Evidential Breath Testing (EBT)	\$30 per test
Item III: Additional Services		
Onsite Fee for Random Drug Testing Services		\$60 per hour per tech
After Hours Post Accident Testing		\$130 for the first hour \$80 for each additional hour after the first hour
(After Hours shall mean outside of normal business hours, Monday -Friday 8:00 am to 5:00 pm)		

- 4.2 Contractor shall submit invoices to City monthly, in a form acceptable to City, which City shall pay within 30 days of receipt and approval by Fire Chief or designee. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Fire Department, P.O. Box 839966, San Antonio, Texas 78283-3966. Alternatively, invoices can be submitted electronically to accounts.payable@sanantonio.gov with a copy to lucia.puente@sanantonio.gov.

- 4.3 In accordance with the Texas Prompt Payment Act, City shall have not less than 30 days to pay for goods or services. Time for payment, including payment under discount terms, will be computed from the later of: (1) the date performance of the service under the contract is completed or (2) the date City receives a correct and valid invoice for the services. Payment is deemed to be made on the date of mailing of the check. Payment is made in US dollars only.

This provision shall not apply where there is a bona fide dispute between City and Contractor about the service performed that causes the payment to be late, or where the invoice is not mailed to the address provided herein.

- 4.4 The payment amount due on invoices may not be manually altered by City personnel. Once disputed items are reconciled, Contractor must submit a corrected invoice or a credit memorandum for the disputed amount.

- 4.5 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City. The parties hereby agree that all compensable expenses of Contractor have been provided for in the total payment to Contractor as specified in Section 4.1 above. Total payments to Contractor cannot exceed that amount set forth in Section 4.1 above, without prior approval and agreement of all parties, evidenced in writing.
- 4.6 Payment will be made to Contractor following approval of the monthly invoice by Fire Chief or designee. City shall not be obligated or liable under this Agreement to any party, other than Contractor, for the payment of any monies or the provision of any goods or services.

ARTICLE V

OWNERSHIP OF DOCUMENTS

- 5.1 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 Agreement shall be the subject of any copyright or proprietary claim by Contractor.
- 5.2 Contractor acknowledges and agrees that all Local Government Records, as described herein, produced in the course of the work required by this contract will belong to and be the property of City. Contractor will turn over to City all such records. Contractor shall not, under any circumstances, release any records created during the course of performance of this contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.
- 5.3 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.

ARTICLE VI

RECORDS RETENTION

- 6.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.
- 6.2 Contractor shall retain any and all documents produced as a result of services provided

hereunder for a period of four (4) years (hereafter referred to as “retention period”) from the date of termination of the Agreement. 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, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor 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 Contractor to return the documents to City at Contractor’s expense prior to or at the conclusion of the retention period. In such event, Contractor may retain a copy of the documents at its sole cost and expense.

- 6.3 Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Contractor understands and agrees that City will process and handle all such requests.
- 6.4 S.B. 943 – Disclosure Requirements for Certain Government Contracts. For contracts (1) with a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City, or (2) that result in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a given fiscal year, Contractor acknowledges that the requirements of the Texas Public Information Act, Government Code, Chapter 552, Subchapter J, pertaining to the preservation and disclosure of Contracting Information maintained by the City or sent between the City and a vendor, contractor, potential vendor, or potential contractor, may apply to this contract. Contractor agrees that the contract can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 6.5 Contractor warrants and certifies by signing this Contract, that it, has not knowingly or intentionally failed to comply with this subchapter in a previous contract. City hereby relies on Contractor’s certification, and if found to be false, City may terminate this Agreement for material breach.

ARTICLE VII

TERMINATION

- 7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.
- 7.2 Termination Without Cause. This Agreement may be terminated by City without cause upon thirty (30) calendar days’ written notice, which notice shall be provided in accordance with Article VIII. Notice. Such notice must specify an effective date of termination, which shall be not less than thirty (30) days after the date of receipt of the notice by the other party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other party.

- 7.3 Defaults with Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this section 7.3 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Contractor fails to cure the default within such 30 day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another Contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new contractor against Contractor's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.
- 7.4 Termination for Cause. Should Contractor fail to fulfill in a timely and proper manner, as determined solely by the Fire Chief or designee, its material obligations under this contract, or violate any of the material terms of this contract, City shall have the right to immediately terminate the contract in whole or in part. Notice of termination shall be provided in writing to Contractor, effective upon the date set forth in the notice. City may, in City's sole discretion, provide an opportunity for Contractor to cure the default. If City elects to offer an opportunity to cure, City shall provide notice, which notice shall be provided in accordance with Article VIII. Notice, to Contractor specifying the matters in default and the cure period. If Contractor fails to cure the default within the cure period, City shall have the right, without further notice, to terminate the contract in whole or in part. Such termination shall not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor. The occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 7.4.1 Contractor makes or allows to be made any material misrepresentation or provides any materially misleading information in connection with this Contract, including, but not limited to, Contractor's proposal, or any covenant, obligation, term or condition contained in this Contract; or
 - 7.4.2 Contractor violates or fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this Contract and such failure is not cured within 30 days after written notice to Contractor by City detailing such failure, except those events of default for which an opportunity to cure is required in a shorter time as provided for herein; or
 - 7.4.3 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting; or
 - 7.4.4 Contractor ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing to its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue); or if a receiver, trustee or liquidator is appointed for it or any substantial part of Contractor's assets or properties; or

- 7.4.5 Contractor fails to comply in any respect with the insurance requirements set forth in this Contract and such failure is not cured within 30 days after written notice to Contractor by City regarding such failure; or
 - 7.4.6 Contractor violates any rule, regulation or law by which Contractor is bound or shall be bound while an in performing services required under this Contract and such violation is not cured within 30 days after written notice to Contractor by City regarding such violation; or
 - 7.4.7 Any material breach of the terms of this Agreement, as determined solely by City.
- 7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 7.6 Regardless of how this Agreement is terminated, Contractor shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Contractor, or provided to Contractor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested by City.
- 7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Contractor to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Contractor of any and all right or claims to collect moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Agreement.
- 7.8 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

ARTICLE VIII

NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when

sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

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

If intended for Contractor, to:

A&D Tests, Inc.
4011 South General Bruce Drive
Temple, Texas 76502

ARTICLE IX

INTELLECTUAL PROPERTY

9.1 Contractor shall pay all royalties and licensing fees. Contractor shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, trademarks, trade secrets, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Contractor has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

9.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware or any other intellectual property infringe upon any United States or International patent, copyright or trademark, Contractor will immediately:

Either:

9.2.1 Obtain, at Contractor's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, both the programs and hardware or any other intellectual property as the case may be; or

9.2.2 Alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated; and

9.2.3 Reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

9.3 Contractor further agrees to:

9.3.1 Assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent, copyright, trademark or any other intellectual property rights arising from the use and/or sale of the equipment or software under this Agreement;

9.3.2 Assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related

- expenses; and
- 9.3.3 Indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

- 9.3.4 Contractor is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Contractor agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City;
- 9.3.5 The Software or the equipment is used by the City in the form, state, or condition as delivered by Contractor or as modified without the permission of Contractor, so long as such modification is not the source of the infringement claim;
- 9.3.6 The liability claimed shall not have arisen out of the City's negligent act or omission; and
- 9.3.7 The City promptly provide Contractor with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Contractor assumes responsibility under this article.

ARTICLE X **INSURANCE**

- 10.1 Prior to the commencement of any services under this Agreement, CONTRACTOR must provide a completed Certificate(s) of Insurance to CITY's Fire Department. The certificate must be:
- 10.1.1 clearly labeled with the legal name of the event in the Description of Operations block;
- 10.1.2 completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (CITY will not accept Memorandum of Insurance or Binders as proof of insurance); and
- 10.1.3 properly endorsed and have the agent's signature, and phone number.
- 10.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by CITY'S Fire Department. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.
- 10.3 If the CITY does not receive copies of insurance endorsement, then by executing this Agreement, CONTRACTOR certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for this Agreement.
- 10.4 The CITY's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this

Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

- 10.5 CONTRACTOR shall obtain and maintain in full force and effect for the duration of this Agreement, 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 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. If the CONTRACTOR claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate
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 Coverage)	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service. Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.

- 10.6 CONTRACTOR must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of CONTRACTOR and provide a certificate of insurance and endorsement that names CONTRACTOR and CITY as additional insureds. CONTRACTOR shall provide CITY with subcontractor certificates and endorsements before the subcontractor starts work.
- 10.7 If a loss results in litigation, then the CITY is entitled, upon request and without expense to the CITY, to receive copies of the policies, declaration page and all endorsements. CONTRACTOR must comply with such requests within 10 days by submitting the requested insurance documents to the CITY at the following address:

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

- 10.8 CONTRACTOR's insurance policies must contain or be endorsed to contain the following provisions:
- Name CITY and 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 CITY. The endorsement requirement is not applicable for workers' compensation and professional liability policies;
 - Endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy. CITY's insurance is not applicable in the event of a claim;
 - CONTRACTOR shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of CITY; and
 - Provide 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.
- 10.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, CONTRACTOR shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONTRACTOR's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 10.10 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 required, CITY may order CONTRACTOR to stop work and/or withhold any payment(s) which become due to CONTRACTOR under this Agreement until CONTRACTOR demonstrates compliance with requirements.
- 10.11 Nothing contained in this Agreement shall be construed as limiting 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.
- 10.12 CONTRACTOR's insurance shall be deemed primary and non-contributory with respect

to any insurance or self - insurance carried by CITY for liability arising out of operations under this Agreement.

- 10.13 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of CITY shall be limited to insurance coverage provided.
- 10.14 CONTRACTOR and any subcontractor(s) are responsible for all damage to their own equipment and/or property result from their own negligence.

ARTICLE XI

INDEMNIFICATION

- 11.1 **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 and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, 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 the rights or performance of the duties under this Contract. 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 FOR 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.**
- 11.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the 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 AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The 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.
- 11.3 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.

- 11.4 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.

ARTICLE XII

ASSIGNMENT AND SUBCONTRACTING

- 12.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.
- 12.2 It is City's understanding and this Agreement is made in reliance thereon, that Contractor intends to use the following subcontractors in the performance of this Agreement: **None**. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Fire Chief or designee in writing.
- 12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the Fire Chief or designee.
- 12.4 Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of Fire Chief or designee. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee or subcontractor.

- 12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

ARTICLE XIII

INDEPENDENT CONTRACTOR

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 consultants; that the doctrine of “respondeat superior” shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and 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.

ARTICLE XIV

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the Contractor represents and warrants by signing this Contract that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City’s Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Contractor shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City’s Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any

third party. Contractor's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Contractor shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

ARTICLE XV

CONFLICT OF INTEREST

15.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Sections 2-42 and 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. 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 or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
- an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

15.2 Pursuant to the subsection above, Contractor warrants and certifies by signing this Contract, and this Contract is made in reliance thereon, that by contracting with the City, Contractor does not cause a City employee or officer to have a prohibited financial interest in the Agreement. Contractor further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

ARTICLE XVI

AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor. Fire Chief or designee shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

ARTICLE XVII

COMPLIANCE

17.1 Contractor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

17.2 Non-Discrimination. As a party to this contract, Contractor understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in

Chapter 2, Article X. of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

ARTICLE XVIII

NONWAIVER OF PERFORMANCE

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

ARTICLE XIX

LICENSES/CERTIFICATIONS

Contractor warrants and certifies by signing this Contract 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. Upon request of City, Contractor shall provide copies of documents substantiating such training, licenses and/or certifications.

ARTICLE XX

LAW APPLICABLE & LEGAL FEES

- 20.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 20.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 20.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

ARTICLE XXI
LEGAL AUTHORITY

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

ARTICLE XXII
PARTIES BOUND

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

ARTICLE XXIII
CAPTIONS

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

ARTICLE XXIV
CONFIDENTIAL INFORMATION

Contractor shall secure the confidentiality of records and information that Contractor may have access to in accordance with the applicable Federal, State, and local laws and regulations. This provision shall not be construed as limiting City's or its authorized representatives' right of access to records or other information under this Contract.

ARTICLE XXV
SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement 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.

ARTICLE XXVI
STATE PROHIBITIONS ON CONTRACTS

- 26.1 This Article only applies to a contract that:
- (1) is between a governmental entity and a company with 10 or more full-time employees; and
 - (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

- 26.2 "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

- 26.3 Prohibition on Contracts with Companies Boycotting Israel. Texas Government Code §2271.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

By executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate this contract for material breach.

- 26.4 Prohibition on Contracts with Companies Boycotting Certain Energy Companies. Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

By executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

- 26.5 Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

"Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

By executing contract documents with the City of San Antonio, Company hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

ARTICLE XXVII

PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Contractor hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Contractor's certification. If found to be false, or if Contractor is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

ARTICLE XXVIII
EXECUTION IN COUNTERPART

This Agreement and any amendments thereto may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. In the event that any signature is delivered by facsimile transmission or by email delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

ARTICLE XXIX
AUTOPEN OR ELECTRONIC SIGNATURE

This Agreement and any amendments hereto may be signed by autopen or electronic signature (e.g., DocuSign or similar electronic signature technology) and may be transmitted by electronic means. Copies of this Agreement and any amendments hereto that are so executed and delivered have the same force and effect as if executed with handwritten signatures and physically delivered.

ARTICLE XXX
INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits:

Exhibit A City’s Request for Proposal (RFP) No. 23-116; RFx 6100017163, including any addendums, exhibits, and attachments

Exhibit B Contractor’s Proposal submitted in response to RFP No. No. 23-116; RFx 6100017163

ARTICLE XXXI
ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

A&D TESTS, INC.

(Signature)

Printed Name: _____

Title: _____

Date: _____

Approved as to Form:

Assistant City Attorney

(Signature)

Printed Name: **Clanci Mitchell**

Title: **President**

Date: _____