

**PROFESSIONAL SERVICES AGREEMENT
FOR
LABORATORY TESTING
FOR THE SAN ANTONIO FIRE DEPARTMENT WELLNESS CENTER**

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 **Clinical Pathology Laboratories, Inc.**, by and through its President/CEO (“CPL” or “Contractor”). City and CPL 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 “Director” or “Fire Chief” shall mean the Chief of San Antonio Fire Department or Fire Chief’s designee.
- 1.4 “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, as may be amended from time to time.
- 1.5 “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 the public has access to it or 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 “RFP” shall mean the City’s Request for Proposal attached hereto as Exhibit “A” and incorporated by reference herein.
- 1.7 “SAFD” shall mean the San Antonio Fire Department.

ARTICLE II
TERM

- 2.1 The term of this Agreement shall commence upon the effective date of the ordinance awarding the contract or March 1, 2025, whichever is later. Unless sooner terminated in accordance with the provisions of this Agreement, the contract shall terminate on February 29, 2028.
- 2.2 City may, at its sole option, extend the term of this Agreement, under the same terms and conditions, for up to two (2) additional one (1) year periods. All extensions shall be in writing and may be signed by the Fire Chief, or designee, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funding therefor.
- 2.2 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

A. General

- 3A.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.
- 3A.2 Contractor shall provide all services as set forth in Contractor's Proposal attached hereto as Exhibit "B" and incorporated by reference herein. Contractor understands and agrees that Exhibit "B" is a part of this Agreement, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by the Contractor as completely and fully as are the obligations, conditions, tasks, products, and representations imposed by this Agreement.
- 3A.3 The terms of this Agreement shall control where there is any conflict between the terms of the RFP, the Contractor's Proposal and the terms of this Agreement, and the City's RFP shall control where it conflicts with the Contractor's Proposal.
- 3A.4 Contractor shall perform services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional medical group in performing services of a similar nature, in the San Antonio, Texas area under similar circumstances. This includes the knowledge and experience ordinarily required of a member of that profession and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.
- 3A.5 Medical information must be treated as confidential in compliance with HIPAA.
- 3A.6 Contractor will not charge the City for missed appointments.
- 3A.7 Contractor shall meet with City on a quarterly basis, or as needed.
- 3A.8 Contractor shall be available to attend meetings and make presentations as requested by City.

- 3A.9 Contractor agrees to assign a dedicated unit including, but not limited to, a Supervisor/Manager who shall be responsible for the task administration and work performance for this Agreement.
- 3A.10 Contractor agrees to notify City of any changes in Contractor's ownership interest greater than 10%, or control of its business entity. Notwithstanding any other remedies that are available to City under this Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of this Contractor at the sole discretion of the City.
- 3A.11 All work performed by Contractor hereunder shall be performed to the satisfaction of Fire Chief. The determination made by Fire Chief shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Contractor, which is not satisfactory to Fire Chief. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Contractor's work not be satisfactory to Fire Chief; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate. City shall notify Contractor in writing of any decision to withhold payment. Should City elect to terminate, it will do so in accordance with the provisions for Defaults with Opportunity for Cure contained in this Agreement.

B. Laboratory Testing Services

- 3B.1 Contractor shall provide the SAFD Wellness Center with laboratory testing services.
- 3B.2. Multiphasic lab testing includes, but is not limited to, the following:
- Complete Blood Count (CBC) with Differential/Platelet
 - Comprehensive Metabolic Panel (CMP) to include electrolytes, renal function (BUN, Creatinine), fasting glucose, and liver function
 - Lipid Panel with total cholesterol, High Density Lipoproteins (HDL), Low Density Lipoproteins (LDL), and triglycerides
 - Prostate Specific Antigen (PSA)
 - Urinalysis, Complete
 - Hepatitis C Virus Screening
 - HIV Screening
 - Lead, Blood (adult)
 - TSH + Free T4 Profile
 - CA125
 - HbA1C
 - QuantiFERON Gold Plus
- 3B.3 Contractor may perform the requested services at any of its locations around the City on a walk-in basis during normal hours. Contractor will provide services within 30 minutes from the time that the employee signs in. SAFD employees that schedule appointments online will be given preference over walk-ins.
- 3B.4 Laboratory orders will be entered online by the SAFD Wellness Center staff and will be retrieved by Contractor when an employee presents at any of the designated facilities (CPI San Antonio Area Patient Service Centers).

- 3B.5 Laboratory draws/collection may also be conducted at the SAFD Wellness Center. Contractor will provide City with all necessary items to complete the draws/collections.
- 3B.6 Contractor will pick up specimens from the SAFD Wellness Center for testing on the same day as notified by the City of such need.
- 3B.7 Contractor will work with the City’s selected EMR (Electronic Medical Records) vendor to incorporate ordering and receipt of test results within each employee’s electronic medical record.
- 3B.8 Contractor will provide test results to City, via the EMR, within 72 hours from the time of collection.
- 3B.9 At minimum, data collection must include a patient identifier, age, and assay results. Data is the property of the City and must be returned upon the expiration or termination of the contract. Individual laboratory results shall be kept strictly confidential, and any use of the information collected must be approved by the City in advance.

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, of all services and activities set forth in this Agreement, City agrees to pay Contractor rates as follows:

Test / Service Description	Estimated Annual Quantity	Price Per Test / Service	Estimated Annual Total
1. Complete Blood Count (CBC)	1500	\$2.10	\$3,150.00
2. Comprehensive Metabolic Panel (CMP) to include electrolytes, renal function (BUN, Creatinine), fasting glucose, liver function	1500	\$2.10	\$3,150.00
3. Lipid Panel with total cholesterol, High Density Lipoproteins (HDL), Low Density Lipoproteins (LDL), and triglycerides	1500	\$2.10	\$3,150.00
4. Prostate Specific Antigen (PSA)	1500	\$4.00	\$6,000.00
5. Urinalysis, Complete	1500	\$2.45	\$3,675.00
6. Hepatitis C Virus Screening	200	\$5.04	\$1,008.00
7. HIV Screening	200	\$4.20	\$840.00
8. CA125	3	\$15.00	\$45.00
9. Lead, Blood (Adult)	250	\$5.25	\$1,312.50
10. TSH + Free T4 Profile	1500	\$5.00	\$7,500.00
11. HbA1C	900	\$4.00	\$3,600.00
12. QuantiFERON Gold Plus	100	\$42.00	\$4,200.00
			\$37,630.50

- 4.2 Contractor shall submit monthly invoices to City, in a form acceptable to City, which City shall pay within 30 days of receipt and approval by Fire Chief. The final payment due herein will not be paid until the reports, data, and documents required under this Agreement have been received and approved by the City. 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 – Office of Health and Wellness, 215 S. San Saba, Suite 111, San Antonio, Texas 78207, or electronically to: accounts.payable@sanantonio.gov with a copy to betsy.dose@sanantonio.gov.
- 4.3 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 and approved by the San Antonio City Council by passage of an ordinance therefor.
- 4.4 Final acceptance of work products and services require written approval by City. The approving official shall be Fire Chief. Payment will be made to Contractor following written approval of the final work products and services by Fire Chief. 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 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 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, including, but not limited to any database created by Contractor containing identifying patient information in furtherance Contractor's work hereunder.
- 5.2 Contractor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Agreement, shall belong to and be the property of City. Contractor shall be required to turn over to City, all such records. Contractor may retain a copy of such records with City's consent; however, all such records shall remain confidential and may not be released without City's prior written consent. This provision shall survive termination of this Agreement.
- 5.3 Contractor understands and acknowledges that as the exclusive owner of any and all such local government records, City has the right to use all such writings, documents and information as City desires, without restriction.

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 five (5) 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.

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 either party without cause upon 30 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting; or
- 7.3.2 Any material breach of the terms of this Agreement, as determined solely by City.
- 7.4 Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this section 7.4 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 10 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 10 calendar 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 consultant 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 consultant 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.

7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA;

7.4.2 Bankruptcy or selling substantially all of company's assets;

7.4.3 Failing to perform or failing to comply with any covenant herein required; or

7.4.4 Performing unsatisfactorily.

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 fifteen (15) 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 thirty (30) 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 thirty (30) 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 Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Agreement.

7.9 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
Attn: Fire Department
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for Contractor, to:

Clinical Pathology Laboratories, Inc.
12450 Network Blvd. #102
San Antonio, Texas 78249

With Copy to:

City of San Antonio
Fire Department, Office of Health and Wellness
215 S. San Saba, Suite 111
San Antonio, Texas 78207

With Copy to:

Clinical Pathology Laboratories, Inc.
9200 Wall Street
Austin, TX 78750
Attn: President

ARTICLE IX
INTELLECTUAL PROPERTY

- 9.1 Contractor agrees to abide by the following regarding intellectual property rights:
- 9.2 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, materials and methods used by Contractor in its performance under this Agreement. Contractor 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.
- 9.3 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware, infringe upon any United States patent or copyright, Contractor will immediately either:
- 9.3.1 Obtain, at Contractor's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be; or
 - 9.3.2 Alter the programs, hardware, or both the programs and hardware, so that the alleged infringement is eliminated, and

- 9.3.3 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.
- 9.4 Contractor further agrees to:
- 9.4.1 Assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement,
- 9.4.2 Assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation- related expenses, and
- 9.4.3 Indemnify the City against any monetary damages and/or costs awarded in such suit.
- 9.5 Provided that:
- 9.5.1 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,
- 9.5.2 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, and
- 9.5.3 the liability claimed shall not have arisen out of the City's negligent act or omission, and 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 section.

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:
- clearly labeled with the name of this contract in the Description of Operations block;
 - 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
 - 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 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 contract.
- 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:

<u>TYPE</u>	<u>AMOUNTS</u>
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 of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella 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 Coverage)	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.
*6. Cyber Liability	\$1,000,000 per claim \$1,000,000 general aggregate, or its equivalent in Umbrella Liability Coverage.
*If Applicable	

- 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
315 S. Santa Rosa Ave # 2000
San Antonio, TX 78207

10.8 Contractor's insurance policies must contain or be endorsed to contain the following provisions:

- Name 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 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 30 days advance written notice directly to City of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written 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 are responsible for all damage to their own equipment and/or property resulting 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 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 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.** In addition, Contractor agrees to indemnify, defend, and hold the City harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.
- 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 City of San Antonio City Council (“City Council”), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.
- 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 City Council.
- 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 the City Council, as evidenced by passage of an ordinance. 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

- 13.1 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 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.

13.2 Any and all of the employees of the Contractor, wherever located, while engaged in the performance of any work under this Agreement shall be considered employees of the Contractor only, and not of the City, and any and all claims that may arise from the Workers’ Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the Contractor.

13.3 No Third Party Beneficiaries: For purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that (1) this Agreement only affects matters/disputes between the Parties to this Agreement and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may benefit incidentally by this Agreement; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Contractor.

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 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 Section 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, and this Agreement 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 Contract. 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, and subject to approval by the City Council, as evidenced by passage of an ordinance. Fire Chief shall have authority to execute extensions as provided in Section 2.2 and amendments that do not involve an increase to the contract prices in Article IV, Compensation to Contractor.

ARTICLE XVII
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 XVIII
LICENSES/CERTIFICATIONS

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

ARTICLE IX
COMPLIANCE

- 19.1 Contractor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.
- 19.2 Contractor will maintain the confidentiality of all medical and other patient-identifiable health information in accordance with all applicable federal and state laws and regulations, including the Privacy Rule and the Security Rule of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as may be amended from time to time.
- 19.3 Contractor shall comply with the electronic transmission standards, and with all other regulations as might be adopted by HIPAA.
- 19.4 The parties acknowledge that they are "Business Associates" as defined in Title 45, Section 160.103, of the Code of Federal Regulations. Contractor shall abide by the terms of the Business Associate Agreement executed by the parties, attached hereto as Exhibit “C” and incorporated herein by reference.

ARTICLE XX
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 XXI
LAW APPLICABLE & LEGAL FEES

- 21.1 **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.**
- 21.2 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.
- 21.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

ARTICLE XXII
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 XXIII
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 XXIV
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 XXV
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. 24-110; RFx 6100018031

Exhibit B – Contractor's Proposal submitted in response to RFP No. 24-110; RFx 6100018031

Exhibit C – HIPAA Business Associate Agreement

ARTICLE XXVI
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.

ARTICLE XXVII
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 XXVIII
STATE PROHIBITIONS ON CONTRACTS

28.1 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.

28.2 "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.

28.3 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 this Agreement 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.

28.4 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 this Agreement 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.

- 28.5 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 this Agreement 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.

XXIX. 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.

[Signature Page Follows]

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

CITY OF SAN ANTONIO

**CLINICAL PATHOLOGY
LABORATORIES, INC.**

(Signature)

Printed Name: _____

Title: _____

Date: _____

Approved as to Form:

Assistant City Attorney

DocuSigned by:

Mark Silberman, M.D.

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(Signature)

Printed Name: Mark Silberman, M.D.

Title: President/CEO

Date: 11/8/2024 | 5:38 AM PST