

**CONTRACT
FOR
RANDOM, REASONABLE SUSPICION,
AND POST-ACCIDENT DRUG TESTING
SERVICES**

This CONTRACT is entered into by and between the City of San Antonio (CITY) and Oracle Tech Diagnostic Labs, LLC. (CONSULTANT).

WHEREAS, CITY wishes to engage the services of a vendor to provide random, reasonable suspicion, and post-accident drug testing to the San Antonio Police Department (SAPD) for sworn members of the SAPD and San Antonio Fire Department (SAFD); and

WHEREAS, CONSULTANT will provide the following services in accordance with the terms outlined below.

I. TERM

- 1.1 This contract shall commence on April 15, 2025, and shall terminate on October 14, 2028, unless terminated earlier pursuant to the provisions of this Contract with two one-year renewal options at City's request.
- 1.2 CONSULTANT and CITY recognize that the continuation of any contract after the close of any given fiscal year of CITY, which fiscal year ends on September 30, shall be subject to appropriation of funds for the contract. Should funds not be appropriated, this contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

II. SCOPE OF SERVICES

San Antonio Police Department (SAPD)

A. Random Testing

- 2A.1 CONSULTANT shall provide to CITY random drug testing of sworn members of the SAPD during the term of this Contract, pursuant to the provisions set out below.
- 2A.2 CONSULTANT shall randomly select and test 50 of all active sworn officers per month or more if requested during a calendar year based on the authorized manpower levels of the SAPD as of January 1st of each year. CONSULTANT shall use a computerized program certified as non-discriminatory to randomly select officers to be tested.

- 2A.3 CONSULTANT shall provide to the Mandatory Drug Testing Program Coordinator the specified number of requested random donors, who shall only be known to the CONSULTANT by a unique number, by the end of business on the day of the request.
- 2A.4 Random drug testing shall consist of a urinalysis.

B. Reasonable Suspicion Testing

- 2B.1 CONSULTANT shall provide to CITY reasonable suspicion drug testing of sworn members of the SAPD, at the request of CITY, during the term of this contract, pursuant to the provisions set out below.
- 2B.2 Reasonable suspicion drug testing shall consist of both a urinalysis and a breathalyzer test.

C. Post-Accident Testing

- 2C.1 CONSULTANT shall provide to CITY post-accident drug testing of sworn members of the SAPD, at the request of CITY, during the term of this contract, pursuant to the provisions set out below.
- 2C.2 Post-accident drug testing shall consist of both a urinalysis and a breathalyzer test.

D. General

- 2D.1 As requested by the CITY, every month during the term of this Agreement, CONSULTANT will be available to meet with CITY representatives to discuss matters related to this Agreement.
- 2D.2 Urinalysis. A donor's urine sample shall be tested to determine the level of the substances specified below.
- A. CONSULTANT shall store positive testing specimens collected for a period of one year or until all administrative or legal disputes have been resolved, which could be a number of years. CITY shall give CONSULTANT reasonable notice if administrative and legal disputes arise, in order that CONSULTANT may retain the specimen involved.
- B. Pursuant to the provisions of the collective bargaining agreement in effect, CONSULTANT shall accompany a selected officer to a qualified physician's office or a certified testing laboratory to have the testing administered, at the request of the officer, at the officer's expense, within

five hours after notification of an order for testing.

- C. CONSULTANT shall allow an officer up to four hours to provide a specimen and document the circumstances surrounding any unwillingness, failure or inability to provide a specimen. If, after two hours, an officer has not provided a specimen, CONSULTANT shall contact CITY's Random Drug Testing Program Coordinator.
- D. CONSULTANT shall obtain a urine specimen through stricter observation where there is reason to believe, as determined by CONSULTANT and CITY, that an initial specimen has been altered or substituted.
- E. CONSULTANT shall notify the Mandatory Drug Testing Program Coordinator within five (5) business days of a new employee hired by CONSULTANT. CONSULTANT shall notify the Mandatory Drug testing Program Coordinator within twenty-four (24) hours of a contract employee's termination. CONSULTANT shall return CITY issued badge of terminated employees within five (5) business days to the Mandatory Drug Testing Program Coordinator. CONSULTANT shall ensure that only employees who have not been arrested by Officers of the SAPD or have not been convicted of a felony or misdemeanor crime involving dishonest conduct or possession of illegal drugs be involved in the collection or handling of an unsealed sample collected from an Officer. Criminal background checks must be conducted on all of CONSULTANT's employees prior to employment and prior to providing service pursuant to this contract and annually post hire during the Contract term.
- F. CONSULTANT shall use a laboratory that is experienced and capable of quality control documentation, chain of custody documentation, demonstrated technical expertise, and proficiency in urinalysis, and shall comply with all requirements of the Substance Abuse Mental Health Services Administration (SAMHSA) and the College of American Pathologist Forensic Urine Drug Testing Program (CAP FUDTP).
- G. CONSULTANT shall ensure that both the initial and confirmation tests are performed at a SAMHSA/CAP FUDTP certified laboratory.
- H. CONSULTANT shall conduct an initial screening (5-panel) split sample urine test for the current classes of drugs listed under DOT Rule 49 CFR Part 40 Subpart F (<https://www.transportation.gov/odapc/part40/40-87>):
- I. The urine sample will be tested for the presence of any of the identified classes of prohibited drugs.

- A. An initial non-negative test result will not be considered conclusive; rather, it will be classified as "pending confirmation."
 - B. A non-negative test result on the initial drug-screening test will automatically require a confirmation drug test be performed.
 - J. Should a confirmation test be appropriate as a result of a non-negative initial drug-screening test, the confirmatory test procedure will be technologically different and more sensitive than the initial drug screening test. CONSULTANT shall conduct a confirmation (5-panel) drug screening test on each drug test by the SAMHSA/CAP FUDTP certified laboratory selected to conduct the drug test (DOT Rule 49 CFR Part 40 Section 40.87)
 - K. CONSULTANT shall provide a medical review officer.
 - L. CONSULTANT shall expedite the collection of urine from on-duty officers and provide a separate private waiting area if collection is performed at a local laboratory.
 - M. CONSULTANT shall provide data collection in accordance with state and federal regulations. At a minimum, data collected must include patient identifier, age, race, and assay results.
 - N. CITY may amend the substances and levels tested for in both the initial and confirmation tests if required to do so by any collective bargaining agreement with the San Antonio Police Officers' Association that is effective during the term of this Contract.
- 2D.3 Breathalyzer Test. A donor's breath sample shall be tested to determine alcohol level.
- A. CONSULTANT shall conduct a breathalyzer test as soon as practicable. If an officer refuses or delays the administration of the test, CONSULTANT shall contact CITY's Mandatory Drug Testing Program Coordinator.
- 2D.4 CONSULTANT shall be available to provide said random, reasonable suspicion, and post-accident drug testing at all times (24 hours per day, 365 days per year). CONSULTANT'S collector shall present himself at the location specified by the SAPD within one hour of notification to CONSULTANT.
- 2D.5 CONSULTANT shall ensure that only employees who have not been arrested by officers of the SAPD are used in the collecting and handling of an unsealed

specimen or in conducting the breathalyzer test.

- 2D.6 CONSULTANT shall ensure that no employee is used in the collection or handling of an unsealed specimen or in conducting a breathalyzer test who has been convicted of a felony or misdemeanor crime involving dishonest conduct or possession of illegal drugs.
- 2D.7 CONSULTANT shall pick up orders for testing, issued by the Chief of Police, within two (2) business days of notification by the CITY.
- 2D.8 CONSULTANT shall complete, at a minimum, (50) orders a month for SAPD. CONSULTANT agrees \$25.00 will be withheld for each order not completed below the fifty (50) order minimum for failure to meet this performance standard.
- 2D.9 CONSULTANT shall receive a set of orders monthly to be completed within three (3) months of issuance barring extenuating circumstances (e.g. donor is out for an undetermined period of time, such as injured or military leave). CONSULTANT shall document on the order form any failed attempts to collect from a donor. After second failed attempt, CONSULTANT shall notify the Mandatory Drug Testing Program Coordinator via text or email. CONSULTANT agrees for each order not completed within three (3) months of issuance and for which no documented extenuating circumstance exists, \$25.00 for each order will be withheld for failure to meet this performance standard.
- 2D.10 CONSULTANT shall document and maintain all records in a confidential manner and forward all test results and documentation to the Office of the Chief of Police of the SAPD within the first five (5) business days each month.
- 2D.11 CONSULTANT shall deliver all data to the SAPD at the end of the contract, or if terminated earlier, pursuant to the terms contained herein.
- 2D.12 CONSULTANT shall keep individual laboratory and test results strictly confidential. CONSULTANT shall obtain CITY approval for any additional use of information collected pursuant to the terms of this Contract.
- 2D.13 At any time during the term of this contract, should assigned personnel become unavailable so as to unfavorably impact administration of said Contract, a competent replacement shall be provided immediately.
- 2D.14 Prior to discarding specimens at the end of the one-year retention period, CONSULTANT shall notify CITY and obtain CITY approval to discard said

specimens.

- 2D.15 CONSULTANT shall make available the medical review officer for attendance at or participation in any administrative hearing in which the testing conducted pursuant to this Contract is at issue.

E. Quality Assurance

- 2E.1 Establish Quality Assurance procedures to ensure the accuracy and reliability of results for tests performed in connection with this proposed agreement.
- 2E.2 CONSULTANT shall receive prior approval from SAPD in writing to add subcontractors, or other services providers that will be hired by the CONSULTANT in relations to its Contract with SAPD.
- 2E.3 If at any time during the contract period, should the assigned personnel become unavailable or unfavorably impact administration of the program, CONSULTANT will provide a competent replacement immediately or not to exceed 24 hours.

F. Confidentiality

- 2F.1 CONSULTANT shall ensure the confidentiality of all information contained in medical records or their confidential source documents.
- 2F.2 CONSULTANT shall provide adequate internal control procedures to protect SAPD from financial loss, resulting from any aspect of administering this Contract.

G. Auditing

- 2G.1 CONSULTANT shall allow CITY or its designee to audit all files maintained by the CONSULTANT for the CITY pursuant to this Contract without notice.

San Antonio City Department (SAFD)

2.1.1 GENERAL REQUIREMENTS

- 2.1.2 CONSULTANT covenants and agrees to perform all services described in this Agreement in a good and workmanlike manner to ensure accuracy and timeliness.
- 2.1.3 CONSULTANT 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.
- 2.1.4 CONSULTANT shall provide testing services specified 24 hours per day, seven (7) days per week.
- 2.1.5 CONSULTANT shall provide post-accident drug and alcohol, reasonable suspicion and random drug testing.
- 2.1.6 CONSULTANT 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.
- 2.1.7 CONSULTANT 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.
- 2.1.8 CONSULTANT shall provide a Medical Review Officer (MRO), who is a qualified physician.
- 2.1.9 CONSULTANT 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.
- 2.1.10 CONSULTANT shall have and maintain an established business location within the Bexar County limits to provide these services.
- 2.2.11 CONSULTANT shall ensure that the individual or laboratory selected for collecting samples conducts and documents background investigations on all personnel involved in the collection or handling of an unsealed specimen.
- 2.2.12 CONSULTANT 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.

2.2 THRESHOLD LEVEL TESTING

2.2.1 Initial and Confirmatory Test. CONSULTANT 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 (Mandatory Guidelines) 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) Concentrations of a drug at or higher than levels in the Mandatory Guidelines 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.
- b) Concentrations of a drug at or higher than the levels in the Mandatory Guidelines shall be considered a positive test result on the **confirmation** drug screening test.

2.2.2 Alcohol Testing. CONSULTANT 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.

2.2.3 Specimen Collection. CONSULTANT 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 CONSULTANT 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, CONSULTANT must send the split sample to another DHHS-certified laboratory for a second opinion analysis.
 - j) At the request of the employee, CONSULTANT 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).

2.3 POST-ACCIDENT AND REASONABLE SUSPICION TESTING

CONSULTANT 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.

2.4 RANDOM DRUG TESTING

CONSULTANT 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, are not tested more than four times in a twelve-month period. Provide documentation certifying the computerized program utilized to select personnel for testing is random and non-discriminatory.
- b) 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 six-month period.
- c) 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.
- d) Document and maintain all records in a confidential manner and must forward all test results to the Office of the City's Fire Chief within seven (7) days following the specimen collection.

2.5 CONFIDENTIALITY AND DATA

CONSULTANT 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 CONSULTANT if administrative and/or legal disputes arise, so that CONSULTANT may retain the specimen involved.
- f) Contact City prior to discarding specimens at the end of the one-year retention period, CONSULTANT must notify City which specimens it intends discard and obtain City approval.
- g) Ensure all applicable records and accounts of CONSULTANT, together with all supporting documentation, shall be preserved in Bexar County, Texas by CONSULTANT 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, CONSULTANT fails to furnish City any documentation required hereunder within ten (10) days following the written request for same, then CONSULTANT shall be in default of this Contract. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, CONSULTANT shall retain the records until the resolution of such litigation or other such questions. The City must have access to any and all such documents at any and all times, as deemed necessary by City, during the retention period. City may, at its election require CONSULTANT to return these documents to City prior to or at the conclusion of said retention.
- h) Deliver all data to SAFD at the end or upon termination of the Contract.

2.6 AUDITING

- 2.6.1 CONSULTANT shall allow City or its designee to audit all files maintained by the CONSULTANT 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 CONSULTANT'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 CONSULTANT's services, related services performed by CONSULTANT for City, at the offices maintained by CONSULTANT.

- 2.6.2 Should City discover errors in internal controls or in record keeping associated with the scope of work covered by this contract, CONSULTANT 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 CONSULTANT of such discrepancies. CONSULTANT shall inform City in writing of the action taken to correct such audit discrepancies.

2.7 INVOICING

CONSULTANT 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.

- 2.8 Hours of operation for testing services for both SAPD and SAFD are: M-F 7:00 a.m to 7:00 p.m. with after-hours/STAT services available 24/7 for Post Accident and Reasonable Suspicion testing.

III. COMPENSATION TO CONSULTANT

- 3.1 In consideration of CONSULTANT'S performance of the services set forth in this contract, CITY agrees to pay CONSULTANT an estimated total contract amount not to exceed \$900,000.00 as evidenced by duly authorized invoices sent to CITY from CONSULTANT. CITY agrees to pay CONSULTANT'S invoices within thirty days of CITY'S receipt of invoice.
- 3.2 CITY shall consider a change in fees if there is a substance and level change in the Collective Bargaining Agreement.
- 3.3 CONSULTANT shall not be entitled to any travel expenses whether for the collection of urine, for the conducting of the initial test, the confirmatory test, or the re- test for the conducting of the breathalyzer test.
- 3.4 No fees, charges or premiums in any amount, in addition to the actual cost, to that specified in the approved contract shall be paid for any subcontractor services. Regardless of any CITY approval of a subcontract, CITY shall in no event be obligated to any third party, including any subcontractor of CONSULTANT for performance of work of service.
- 3.5 CITY shall be charged a fee of \$500.00 per hour for the medical review officer's attendance at or participation in any administrative hearing in which the testing conducted pursuant to this contract is at issue. If the attendance is in person, reasonable expenses will need to be approved prior to payment. Reasonable

expenses shall be allowed for travel coach only, lodging and meals at per diem rate.

3.6 CONSULTANT shall be paid \$15.00 for each review by the Medical Review Officer of a positive test.

3.7 CONSULTANT shall be paid \$150.00 annual random program fee.

Random Testing

3.8 CONSULTANT shall be paid \$45.00 per 5-panel, on-site screening test for random drug testing. This fee shall include any required confirmatory test for a positive test result.

3.9 CONSULTANT shall be paid \$65.00 per 10-panel initial screening test. This fee shall include any required confirmatory test for a positive test result.

3.10 CONSULTANT shall be paid \$50.00 for the first hour of specimen collection.

3.11 CONSULTANT shall be paid \$50.00 per hour for each hour of waiting for a specimen to be provided by an officer in excess of the first hour (i.e. hour 2, 3 and 4).

3.12 CONSULTANT shall be paid \$40.00 on-site fee charged once per location.

Reasonable Suspicion and Post-Accident Testing

3.13 CONSULTANT shall be paid \$45.00 per 5-panel, on-site screening test. CONSULTANT shall be paid \$65.00 per 10-panel, on-site screening test to include required confirmatory testing.

3.14 CONSULTANT shall be paid \$30.00 per breathalyzer test for reasonable suspicion and post-accident drug testing. A confirmatory breathalyzer test for a positive screen is an additional \$30.00.

3.15 CONSULTANT shall be paid \$100.00 on call fee for reasonable suspicion and post-accident drug testing calls per location to which CONSULTANT is summoned.

3.16 CONSULTANT shall be paid \$80.00 per hour for each hour of waiting for a specimen to be provided by an officer in excess of the first hour (i.e. hours 2, 3 and 4).

- 3.17 CONSULTANT shall be paid \$95.00 per 13-panel initial screening test if requested by SAFD.

IV. LICENSES AND CERTIFICATIONS

- 4.1 All licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials and all applicable state and federal laws and local ordinances must be complied with by CONSULTANT. Failure to comply with this requirement shall be treated as a default and will result in termination of this contract.

V. CONFIDENTIAL WORK

- 5.1 No reports, information, project evaluation, project designs, data, or any other documentation developed by, given to, prepared by, or assembled by CONSULTANT under this contract shall be disclosed or made available to any individual or organization by CONSULTANT without the express prior written approval of CITY.
- 5.2 CONSULTANT shall establish a method to secure the confidentiality of records and information that CONSULTANT may have access to, in accordance with any applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting CITY'S right of access to records or other information under this CONTRACT.
- 5.3 If CONSULTANT receives inquiries regarding documents within its possession pursuant to this contract, CONSULTANT shall immediately forward such request to CITY for disposition.

VI. OWNERSHIP AND EXAMINATION OF DOCUMENTS

- 6.1 All reports, information, and other data given to, prepared by, or assembled by CONSULTANT pursuant to this contract and any other related documents or items shall become the sole property of CITY. Such reports, information, and other data shall be delivered at no cost to CITY upon request or upon termination of this contract without restriction on future use. CONSULTANT may make copies of any and all documents for its files, at its sole cost and expense.
- 6.2 CONSULTANT shall retain all records owned by CITY or to which CITY has access for the retention periods specified by local, state, or federal law or by this contract.
- 6.3 CITY reserves the right to conduct examinations, during regular business hours and following notice to CONSULTANT by CITY of the files, books and records related to the contract with CITY (including such items as specimen maintenance, contracts, paper, correspondence, copy, books, accounts, billings and other information related

to the performance of CONSULTANT'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 CONSULTANT'S services, provided that such audit test are related to those services performed by the CONSULTANT for CITY. These examinations shall be conducted at the offices maintained by CONSULTANT.

VII. DEFAULT AND TERMINATION

- 7.1 For purposes of this contract, "termination" of this contract shall mean termination by expiration of the contract term as set out in article I or earlier termination pursuant to any of the provisions of this contract.
- 7.2 CITY may terminate this contract in accordance with this article, in whole or in part, at any time, for any reason, upon written notice to CONSULTANT. Said notice shall specify the date of termination.
- 7.3 In no event shall CITY'S action of terminating this contract 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 CONSULTANT for any default hereunder or other action.
- 7.4 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 contract shall automatically terminate as of the effective date of such prohibition.
- 7.5 Should this contract be terminated prior to completion of the work identified in article II, CONSULTANT shall, within five business days of the effective date of termination, submit to the CITY its claim, in detail, for the monies owed by the CITY for services performed under this contract through the effective date of termination.
- 7.6 Should CONSULTANT neglect or fail to perform or observe any of the terms, provisions, conditions, or covenants herein contained, and on CONSULTANT'S part to be performed or any way observed, and if such neglect or failure should continue for a period of ninety days after receipt by CONSULTANT of written notice from CITY of such neglect or failure, CITY may terminate this contract. In the event of such default, CONSULTANT shall not receive further payments under the terms of this contract after said ninety-day cure period, and CITY shall be relieved of any further obligations to CONSULTANT.

VIII. NON-WAIVER

- 8.1 Unless otherwise specifically provided for in this contract, a waiver by either party of a breach of any of the terms, conditions, covenants, or guarantees of this contract 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 contract, 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 contract shall be deemed to have been made or shall be effective, unless expressed in writing and signed by the party to be charged. 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.

IX. INDEPENDENT CONSULTANT

- 9.1 CONSULTANT covenants and agrees that CONSULTANT is an independent CONSULTANT and not an officer, agent, servant, or employee of CITY; that CONSULTANT 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, CONSULTANTS, subcontractors, and consultants; that the doctrine of respondent superior shall not apply as between CITY and CONSULTANT, its officers, agents, employees, CONSULTANTS, 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 CONSULTANT. 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 CONSULTANT under this agreement and that the CONSULTANT has no authority to bind the CITY.
- 9.2 Regardless of where the work shall be performed, what supplies or resources are provided by CITY, what instruction or direction is provided by CITY, CONSULTANT and those persons designated by it to provide services shall not be deemed employees of CITY and shall not be entitled to wages or benefits from CITY, other than the compensation provided herein.

X. SUBCONTRACTING AND ASSIGNMENT

- 10.1 Any other clause of this contract to the contrary notwithstanding, none of the work or services covered by this contract shall be subcontracted without the prior written approval of CITY. Any work or services approved for subcontracting hereunder,

however, shall be subcontracted only by written contract or agreement and, unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this contract. Compliance by subcontractors with this contract shall be the responsibility of CONSULTANT.

- 10.2 Despite CITY approval of a subcontract, CITY shall, in no event, be obligated to any third party, including any subcontractor of CONSULTANT, for performance work or services, nor shall CITY funds ever be used for payment of work or services performed prior to the date of contract execution or after the termination of this contract.
- 10.3 Except as otherwise stated herein, CONSULTANT may not sell, assign, pledge, transfer, or convey any interest in this contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, without the prior written consent of CITY. As a condition of such consent, if such consent is granted, CONSULTANT shall remain liable for completion of the services outlined in this contract in the event of default by the successor, assignee, transferee, or subcontractor.
- 10.4 Any attempt to transfer, pledge, or otherwise assign this contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should CONSULTANT assign, transfer, convey, delegate, or otherwise dispose of any part or all of its right, title, or interest in this contract, CITY may, at its option, cancel this contract and all rights, titles, and interest of CONSULTANT shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this contract. The violation of this provision by CONSULTANT shall in no event release CONSULTANT from any obligation under the terms of this contract, nor shall it relieve or release CONSULTANT from the payment of any damages to CITY, which CITY sustains as a result of such violation.

XI. CONFLICT OF INTEREST

- 11.1 CONSULTANT acknowledges that it is informed that the Charter of the City of San Antonio and CITY'S Ethics Code prohibit a CITY officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with CITY or any CITY agency such as CITY owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land, materials, supplies, or services, if any of the following individuals or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten percent or more of the voting stock or shares of the business entity, or ten percent or more

of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

- 11.2 Pursuant to the subsection above, CONSULTANT warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees, and agents are neither officers nor employees of CITY. CONSULTANT further warrants and certifies that it has tendered to CITY a discretionary contracts disclosure statement in compliance with CITY'S Ethics Code.

XII. INDEMNITY

- 12.1 **CONSULTANT COVENANTS AND AGREES TO FULLY INDEMNIFY 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 CONSULTANT'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF CONSULTANT, 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 CONSULTANT 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 CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 12.2 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. CONSULTANT SHALL ADVISE THE CITY IN WRITING WITHIN TWENTY-FOUR HOURS OF ANY CLAIM OR DEMAND AGAINST CITY OR CONSULTANT KNOWN TO CONSULTANT RELATED TO OR ARISING OUT OF CONSULTANT'S ACTIVITIES UNDER TIDS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT CONSULTANT'S COST. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONSULTANT OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

- 12.3 DEFENSE COUNSEL - CITY SHALL HAVE THE RIGHT TO SELECT OR TO APPROVE DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT INFULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CONSULTANT SHALL RETAIN CITY APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS CONTRACT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. CITY SHALL ALSO HAVE THE RIGHT, AT ITS OPTION, TO BE REPRESENTED BY ADVISORY COUNSEL OF ITS OWN SELECTION AND AT ITS OWN EXPENSE, WITHOUT WAIVING THE FOREGOING.
- 12.4 EMPLOYEE LITIGATION - IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED HEREUNDER BY ANY EMPLOYEE OF CONSULTANT, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONSULTANT OR ANY SUBCONTRACTOR UNDER WORKER'S COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.

XIII. INSURANCE

- 13.1 No later than 30 days before the scheduled Contract start, **CONSULTANT** must provide a completed Certificate(s) of Insurance to CITY's Human Resources Department Contract's Division. The certificate must be:
- clearly labeled Drug Testing Services City of San Antonio Police and Fire Department with the legal name of the 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); properly endorsed and have the agent's signature, and phone number,

- 13.2 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 Contract until such certificate and endorsements have been received and approved by CITY'S Human Resources Department. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.
- 13.3 If the City does not receive copies of insurance endorsement, then by executing this Contract, **CONSULTANT** certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Contract.
- 13.4 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 Contract based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- 13.5 **CONSULTANT** shall obtain and maintain in full force and effect for the duration of this Agreement, at **CONSULTANT'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 **CONSULTANT** 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	Statutory
2. Employers' Liability	\$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. *Independent Contractors	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined</u> <u>Single</u> <u>Limit</u> for <u>Bodily</u> <u>Injury</u> and <u>Property</u> <u>Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

13.6 **CONSULTANT** must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of **CONSULTANT** and provide a certificate of insurance and endorsement that names **CONSULTANT** and CITY as additional insureds. Respondent shall provide CITY with subcontractor certificates and endorsements before the subcontractor starts work.

13.7 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. **CONSULTANT** 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
Human Resources Department
100 W. Houston St.
San Antonio, Texas 78205

13.8 **CONSULTANT'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.

- **CONSULTANT** 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.

- 13.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, **CONSULTANT** shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend **CONSULTANT** performance should there be a lapse in coverage at any time during this Contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Contract.
- 13.10 In addition to any other remedies CITY may have upon **CONSULTANT'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, CITY may order **CONSULTANT** to stop work and/or withhold any payment(s) which become due to Consultant under this Contract until **CONSULTANT** demonstrates compliance with requirements.
- 13.11 Nothing contained in this Agreement shall be construed as limiting the extent to which **CONSULTANT** may be held responsible for payments of damages to persons or property resulting from **CONSULTANT** or its subcontractors' performance of the work covered under this Contract.
- 13.12 **CONSULTANT'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 Contract.
- 13.13 The insurance required is in addition to and separate from any other obligation contained in this Contract and no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- 13.14 **CONSULTANT** and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

XIV. CHANGES AND AMENDMENTS

- 14.1 Except when the terms of this contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and **CONSULTANT**.
- 14.2 It is understood and agreed by the parties hereto that changes in local, state, and federal rules, regulations, or laws applicable hereto may occur during the term of this contract and that any such changes shall be automatically incorporated into this contract without written amendment hereto, and shall become a part hereof as of the

effective date of the rule, regulation, or law.

XV. ENTIRE AGREEMENT

- 15.1 This contract and its exhibits 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 contract shall be deemed to exist or to bind the parties hereto unless in writing, dated subsequent to the date hereof, and only executed by the parties.

XVI. SEVERABILITY

- 16.1 If any clause or provision of this contract is held invalid, illegal, or unenforceable under present or future federal, state, or local laws, including, but not limited to, the city charter, city code, or ordinances of the city of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality, or unenforceability shall not affect any other clause or provision hereof and that the remainder of this contract 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 contract that is invalid, illegal, or unenforceable, there be added as a part of the contract a clause or provision as similar in terms to such invalid, illegal, unenforceable clause or provision as may be possible, legal, valid, and enforceable.

XVII. NOTICES

- 17.1 For purposes of this contract, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY

Drug Testing Contract Coordinator
Police/Fire Testing Services
Human Resources
100 W. Houston St.
San Antonio, Texas 78205

CONSULTANT

Oracle Tech Diagnostic Labs, LLC.
860 Wurzbach Suite 1022
San Antonio, Texas 78240

XVIII. LAW APPLICABLE

- 18.1 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.

- 18.2 VENUE AND JURISDICTION FOR ANY LEGAL ACTION OR PROCEEDING BROUGHT OR MAINTAINED, DIRECTLY OR INDIRECTLY, UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL LIE EXCLUSIVELY IN BEXAR COUNTY, TEXAS.
- 18.3 The Parties expressly agree that in the event of litigation, each party waives its right to attorneys' fees.

XIX. NON-DISCRIMINATION

- 19.1 As a party to this Contract, CONSULTANT 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.
- 19.2 As a condition of entering into this Contract, the CONSULTANT 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, CONSULTANT 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. CONSULTANT'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. CONSULTANT shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

XX. LEGAL AUTHORITY

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

XXI. PARTIES BOUND

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

XXII. GENDER

- 22.1 Words of any gender used in this contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXIII. CAPTIONS

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

EXECUTED IN DUPLICATE ORIGINALS on this 26 day of March, 2025.

**CITY OF SAN ANTONIO
LLC.**

Erik Walsh
City Manager

ORACLE TECH DIAGNOSTIC LABS,

Monique Khan Khalil Momand
Owner

Krista Cover
Assistant City Attorney