

SERVICE AGREEMENT
AFTER HOURS DRUG TESTING SERVICES

THIS AGREEMENT (“Agreement”) is made this 9th day of April, 2024, by and between the **CITY OF COCOA**, a Florida municipal corporation (“City”) and **COTG 2021, LLC**, a Florida Limited Liability Company with principal addresses at 1385 Cypress Ave, Ste 107, Melbourne, Florida 32935 (“Contractor”).

RECITALS:

WHEREAS, City is a municipal corporation existing under the laws of the State of Florida, and in the conduct of business, desires to obtain all materials, service, equipment, and labor for after hours, random, and reasonable suspicion drug testing services; and

WHEREAS, Contractor is an active Limited Liability Company, incorporated in the state of Florida, duly licensed and existing under the laws of the State of Florida, experienced in the foregoing, and agrees to perform these services for the City under the terms and conditions set forth in this Agreement; and

WHEREAS, Contractor shall comply with all applicable federal, state, and local regulations regarding the provision of drug testing services; and

WHEREAS, the City of Cocoa deems the services being provided by this Agreement serve a public purpose and are in the best interests of the public health, safety, welfare, convenience, and morals of the citizens of Cocoa.

NOW THEREFORE, in consideration of the mutual premises set forth in this Agreement, it is agreed by and between City and Contractor as follows:

1.0. CONTRACTOR DUTIES.

A. Contractor shall furnish all labor, equipment, and materials necessary to perform after hours, random, and reasonable suspicion drug testing services, as requested by the City on an “as-needed” basis. Contractor shall not be considered the exclusive provider of the Services to the City, and the City may contract with other entities to provide such Services at any time in its discretion. Nothing in this Agreement guarantees that the City shall request any or a certain number of tests to be performed in any given term.

B. Contractor shall perform drug testing services for City on an as-needed basis pursuant to a written request for services from the City for Contractor’s drug testing services. The City shall call Contractor at (321) 327-7481 to arrange for “after hours” drug testing that must occur after 5:00 p.m. At the time the City requests a drug test to be performed, the City shall inform Contractor whether the drug test will be administered at Contractor’s business location in Rockledge or at a designated City facility. In the event the test must be performed at a City facility, Contractor shall

report to the designated City facility within two (2) hours to conduct the requested drug test(s), Monday-Sunday, 24 hours per day.

C. Contractor shall submit an invoice to the City after performing drug testing services pursuant to a request for services from the City. All invoices shall conform to the price schedule attached hereto as **Exhibit A**, which is incorporated herein by this reference. In the event a drug test is requested by the City, the City shall be charged the flat rate established for the quarter for the particular type of test requested, plus the unit price per test as provided in Exhibit A. Multiple tests of the same type in the same quarter shall not result in a duplicate flat rate charge for the quarter. In such case, the City shall be charged only for the unit price of the test. If no test is ordered by the City during a particular quarter, the flat rate shall not be charged to the City. Requests for services for workplace injury incidents shall be invoiced on a per-incident basis. Requests for services for all other drug testing services shall be invoiced on a quarterly basis.

D. It is understood and agreed that the Contractor is an independent contractor, and not an agent or co-venturer with the City regarding the work. Neither Contractor, nor its assigns, nor its successors, shall be considered employees, officers, or agents of the City in any capacity. Contractor shall not be entitled to any benefits which would otherwise apply to City employees.

E. Contractor warrants unto the City that it has the competence and abilities to carefully and faithfully complete the services within the time set forth herein. The Contractor will perform all work in a good and workmanlike manner. The City will be the sole judge of the acceptability of all work performed under this Agreement. Any changes to the work that change the Agreement price or the Agreement time must be authorized by the City in a written change order or addendum to this Agreement.

F. The Contractor will not discriminate against any person based on race, color, religion, sex, national origin, age, or disability.

G. The Contractor will comply with all local, state, and federal laws and safety standards in performing the services under this Agreement.

H. Contractor acknowledges and accepts the terms and conditions of the following Limited Liability Statement:

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action arising out of the Agreement. Contractor expresses its willingness to enter into this Agreement with the knowledge that the Contractor's recovery from the City to any action or claim arising from the Agreement is limited to a maximum amount of all funds actually paid by the City to Contractor pursuant to this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any manner intended to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28, Florida Statutes.

I. The Contractor warrants that it holds any and all necessary licenses required to conduct the work

required by this Agreement and agrees to maintain said licenses in good standing during the term of this Agreement, including a City of Cocoa Business Tax Receipt (unless Contractor is otherwise exempt from the payment of the City's business taxes). Contractor shall immediately notify City in the event of a loss, suspension, or termination of any license required to perform the Services set forth in this Agreement.

J. Contractor shall be responsible for coordinating access to the location where services will be performed and for coordinating all necessary meeting, set-up, staging, or workstation space with City's representative to the extent necessary. Contractor shall additionally follow all security protocols deemed necessary by the City as determined by the City's sole discretion.

K. City will rely on Contractor to exercise sound professional judgment and to devote such time as reasonably necessary to fulfil the intent and purpose of this Agreement.

L. Any drug testing services which the City has already requested the Contractor to complete at the termination of this Agreement shall remain in effect until completion of said services, and all terms and conditions of this Agreement shall survive until completion of the services.

2.0. CITY DUTIES.

A. City agrees to compensate the Contractor for satisfactorily performed work in accordance with the rate schedule attached hereto as **Exhibit A**, which is incorporated herein by this reference. However, in no event shall the total payments in any one fiscal year exceed \$75,000.00. City shall provide payment to Contractor for drug testing services performed by Contractor upon City's receipt of an invoice for said services from Contractor. City shall only be responsible for the payment of services requested by the City. City shall provide payment to Contractor only upon receipt of an invoice. All services provided to the City must be described upon the Contractor's invoice with sufficient clarity for the City to easily identify and confirm the Services having been provided. All invoice entries shall clearly indicate the type of service being rendered, identify the Contractor employee who rendered such service, and note the appropriate charge and hourly rate if applicable. All invoices shall be directed to the City of Cocoa, Attn: Accounts Payable Section, City of Cocoa, 65 Stone St, Cocoa, Florida 32922.

B. City shall make payment to the Contractor in accordance with the Local Government Prompt Payment Act, Section 218.70, Florida Statutes.

C. Contractor shall not invoice the City or seek any compensation from the City to correct or revise any errors or deficiencies in Services provided under this Agreement. To the extent Contractor owes the City any money under this or any other Agreement with the City, the City shall have the right to withhold payment and otherwise back charge Contractor for any money owed to City by Contractor. The City's payment of any invoice under this Agreement shall not be construed or operate as a waiver of any rights under this Agreement or any cause of action arising out of the performance of this Agreement and the Contractor shall remain liable to the City in accordance with applicable law for all damages to the City caused by the Contractor's performance of any Services provided under this Agreement.

3.0. DRUG TESTING SERVICES.

A. Contractor's employees are required to obtain, at no charge, from the City's Human Resources Department, details of City employees identified for testing within two (2) hours of a request for testing services, including the City employee's contact information. City employees completing testing must present Contractor with valid identification in the form of a driver's license or other valid State-issued I.D.

B. City Staff, as designated by The City of Cocoa, shall be provided with electronic copies of test results once said results have been verified by Contractor's Medical Review Officer ("MRO").

C. Contractor's response time shall be no greater than two (2) hours for drug testing services requested by the City under this Agreement.

D. Contractor must provide a HIPAA-compliant authorization and consent form to each employee prior to conducting any form of drug testing services. City employees receiving testing are required to provide Contractor with the signed authorization and consent form. The form must advise the individual employee with written notice that the results will be disclosed to his or her employer and that the employee authorizes such results to be reported to the employer.

E. The Contractor must maintain training qualification documentation for all specimen collectors that are approved and assigned for use. The collector training qualification documentation must be provided to the City upon request and within two (2) business days. The Contractor will provide trained laboratory staff to conduct urine testing and will provide all staff certifications, degrees, special qualification and resumes upon request.

F. Collection sites and mobile collectors must meet the standards for privacy and security per 49 CFR Part 40.41 and 40.43.

G. A urine collection and alcohol test performed at the same time constitutes one testing event. The Contractor is not authorized to invoice the City for an amount greater than the mobile collector's after-hours charge, plus the unit price per test.

H. The Contractor must ensure that a non-fatal flaw occurring at the point of collection is promptly corrected and a memorandum for the record (MFR) is supplied in a timely manner so as not to create a fatal flaw.

I. The Contractor must address and respond in writing, to all concerns of collection site non-compliance that are raised by the City. The Contractor must respond to the concerned party within two (2) business days of the initial notification and must follow these procedures:

I. To determine the validity of the concern raised, the Contractor must review all associated testing documents to assess the collection site's compliance with 49 CFR Part 40 as amended, and the USDOT Specimen Collection Guidelines.

II. As applicable, the Contractor must deliver corrective action requirements to violating collectors and/or collection sites within five business days of the determination of non-

compliance. The Contractor must provide copy of the corrective action notice to the City and contract administrator or designated representative.

III. The Contractor must provide City with an alternative USDOT-qualified specimen collector when a collector or collection site fails to comply with the corrective action requirements imposed by the Contractor.

J. The Contractor must ensure that City is provided with the services of a Medical Review Officer (MRO) who has met the qualification requirements per 49 CFR Part 40.121.

K. The Contractor must ensure that all laboratory results undergo a medical review verification process that is conducted in accordance with 49 CFR Part 40 - Subpart G, as amended.

L. The CONTRACTOR must ensure that the specific urine drug test result reporting procedures are performed in accordance with the requirements of 49 CFR Part 40.163. The CONTRACTOR must ensure that MRO verified negative results are reported to City as soon as possible following verification. Non-flawed, lab-confirmed negative urine specimens should be MRO verified and reported to the City within approximately 24-48 hours of the specimen's arrival at laboratory.

M. The CONTRACTOR must ensure that the MRO provides a written report following MRO verification of all results, that includes the following:

- Full name of donor
- Specimen identification number
- Donor identification number
- Reason for testing (test type)
- Date of the collection
- Result of the test
- Date result was verified by the MRO
- If canceled, the reason for cancellation
- If deemed a Refusal to Test, the reason for the refusal determination

The CONTRACTOR must ensure that City is provided the option to have results reported to the City's primary or secondary contact in all of the following ways:

- Via a secure, password protected website
- Via a secure and confidential electronic mail system

N. The CONTRACTOR must ensure that all result reports and associated records are not released to, or cannot be accessed by, any party other than the City's primary or secondary contact or contract administrator, where applicable.

O. The CONTRACTOR must ensure that all reasonable procedures to protect personal data from unauthorized access, misuse, alteration or disclosure by unauthorized parties are executed at all times and must include the use of data encryption software and secure servers.

P. The CONTRACTOR must ensure that all hard copy testing records are maintained in a secure location that is safeguarded against theft, damage and unauthorized access.

Q. The CONTRACTOR must ensure that all non-negative testing records, both electronic and hard copy are maintained and are accessible to City, for a minimum of five years from date of collection.

R. The CONTRACTOR must ensure that all negative testing records, both electronic and hard copy are maintained and are accessible to City, for a minimum of three years from date of collection.

S. The CONTRACTOR acknowledges and agrees that the City maintains a Drug Free Workplace Program and drug test results shall remain confidential pursuant to Section 440.102(8), Florida Statutes. Drug test results may not be disclosed to third parties except as required by law or pursuant to a court order.

4.0. TERM.

The Term shall commence upon the parties' execution of the Agreement ("Effective Date"). The initial term of this Agreement shall be for two (2) years with the option to extend for three (3) additional one (1) year periods. The City's City Manager may exercise a renewal option, subject to Contractor's agreement to the renewal, by providing the Contractor's with at least thirty (30) days written notice in advance of the anniversary of the commencement Effective Date. Renewals shall be made upon mutual agreement of the parties and upon the same terms described herein. The City has the right to terminate this Agreement for its convenience and without at any time upon thirty (30) days advanced notice.

Time is of the essence in the performance of this Agreement and any request for services placed hereunder.

5.0 INDEMNIFICATION.

Contractor shall indemnify and hold harmless, the City, its employees, agents, elected or appointed officials, and representatives from any and all claims, losses, suits, costs, expenses, fines, penalties, deficiencies, damages, obligations, and liabilities, including all attorney's fees and court costs through all appeals, for which City, its employees, agents, elected or appointed officials, and representatives can or may be held liable as a result of injury to persons (including death) or damage to property occurring by reason of any negligent acts, errors, omissions, or willful misconduct of Contractor, its employees, or agents, arising out of or connected with this Agreement; or which arise out of any inaccurate representation made by the Contractor, its employees or agents; or any breach of this Agreement by Contractor, its employees or agents, except to the extent of negligence, wrongful acts or omissions of the City or its agents, elected or

appointed officials, employees, or representatives. The foregoing indemnification obligation shall further include claims, losses, suits, costs, expenses, fines, penalties, deficiencies, damages, obligations, and liabilities, including all attorney's fees and court costs through all appeals, arising from the Contractor's disclosure of drug test results to unauthorized third parties and City employees' claims of negligence, invasion of privacy, intentional infliction of emotional distress, defamation, or violations of HIPPA and other federal law in connection with the drug testing services provided by the Contractor.

For purposes of this indemnification only, Contractor shall indemnify the City for claims made by the employees of Contractor, and Contractor hereby waives its entitlement, if any, to immunity under SECTION 440.011, Florida Statutes. This waiver has been specifically and mutually negotiated by the parties.

Contractor shall further indemnify and hold harmless, the City, its employees, agents, elected or appointed officials, and representatives from any and all claims and liabilities, whether rightful or otherwise, alleging that the work furnished by the Contractor hereunder, or any part thereof, constitutes an infringement of any patent, copyright, trademark or other intellectual property right of the United States. Contractor shall pay all damages and costs awarded against the City in connection with any such infringement, copyright, trademark, or other intellectual property rights claims.

This indemnification paragraph shall survive the termination of this Agreement until such time as all pending claims between the parties have been settled, or if no such pending claims, until such time as all applicable statute of limitation time periods have expired with respect to the work performed by Contractor pursuant to this Agreement.

6.0. TERMINATION.

City may terminate this Agreement for any reason, with or without cause and without penalty, by giving the Contractor thirty (30) days advance written notice of the termination of this Agreement. In the event of any termination without cause pursuant to the preceding sentence, City shall continue to be responsible for the payment of any outstanding undisputed invoices delivered to the City prior to the date of termination. In addition, should Contractor materially breach this Agreement and such breach is not cured within fifteen (15) days of receiving written notice of such breach by the City, the City shall be entitled to terminate this Agreement immediately and Contractor shall refund the City any pre-paid fees for Services not delivered to the City's satisfaction by Contractor.

Upon receipt of a notice for any termination of this Agreement and any request for drug testing services issued hereunder, the parties shall cooperate with each other and use all commercially reasonable efforts to affect a smooth transition process.

7.0. PUBLIC RECORDS AND AUDITS.

A. Pursuant to Section 119.0701, Florida Statutes, and other applicable public records laws

(collectively, the “Public Records Laws”), Contractor agrees that any records, documents, transactions, writings, papers, letters, computerized information and programs, maps, books, audio or video tapes, films, photographs, data processing software, writings or other material(s), regardless of the physical form, characteristics, or means of transmission, of Contractor related, directly or indirectly, to the services provided to the City under this Agreement and made or received pursuant to law or ordinance or in connection with the transaction of official business by the City, may be deemed to be a public record under and pursuant to the Public Records Laws, whether in the possession or control of the City or the Contractor. If and to the extent said records, documents, transactions, writings, papers, letters, computerized information and programs, maps, books, audio or video tapes, films, photographs, data processing software, writings or other material(s), regardless of the physical form, characteristics, or means of transmission of Contractor are subject to the provisions of Chapter 119, Florida Statutes, or other Public Records Laws (records subject to the Public Records Laws are herein referred to as “public records”), they may not be destroyed without the specific written approval of the City’s designated custodian of public records. All books, cards, registers, receipts, documents, and other papers in connection with this Agreement shall at any and all reasonable times during the normal working hours of the Contractor be open and freely exhibited to the CITY for the purpose of examination and/or audit. Notwithstanding anything herein to the contrary, the parties agree to maintain the confidentiality of any and all records or documents from third party disclosure that are deemed confidential and/or exempt from public records disclosure pursuant to federal or state law, including, but not limited to, under the Health Insurance Portability and Accountability Act of 1996 and related HIPAA Privacy Rules.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, THE CITY CLERK, AT (321) 433-8455, cityclerk@cocoafll.org, 65 Stone Street, Cocoa, Florida 32922.

Contractor is required to and agrees to comply with public records laws. Contractor shall keep and maintain all public records required by the City to perform the services as agreed to herein. Contractor shall provide the City, upon request from the City Clerk, copies of the requested public records or allow the public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law. Upon completion of the Agreement, Contractor shall transfer to the City, at no cost, copies of all public records in possession of the Contractor, provided the transfer is requested in writing by the City Clerk. Upon such transfer, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. However, if the City Clerk does not request that copies of the public records be transferred, the Contractor shall continue to keep and maintain the public records upon completion

of the Agreement and shall meet all applicable requirements for retaining public records. All public records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the City. Should the City not possess public records relating to this Agreement which are requested to be inspected or copied by the City or any other person, the City shall immediately notify Contractor of the request and the Contractor shall then provide such public records to the City or allow the records to be inspected or copied within a reasonable time. If the Contractor does not comply with a public records request, the City may enforce this Section to the extent permitted by law. Contractor acknowledges that if the Contractor does not provide the public records to the City within a reasonable time, the Contractor may be subject to penalties under Section 119.10, Florida Statutes. The Contractor acknowledges that if a civil action is filed against the Contractor to compel production of public records relating to this Agreement, the court may assess and award against Contractor the reasonable costs of enforcement, including reasonable attorney fees. All public records in connection with this Agreement shall, at any and all reasonable times during the normal business hours of the Service Provider, be open and freely exhibited to the City for the purpose of examination, audit, or otherwise. Failure by Service Provider to grant such public access, cooperate with the City's examination or audit, and comply with public records laws and/or requests shall be grounds for immediate unilateral cancellation of this Agreement by the City upon delivery of a written notice of cancellation. If the Contractor fails to comply with this Section, and the City must enforce this Section, or the City suffers a third-party award of attorney's fees and/or damages for violating Chapter 119, Florida Statutes, due to Contractor's failure to comply with this Section, the City shall collect from Contractor prevailing party attorney's fees and costs, and any damages incurred by the City, for enforcing this Section against Contractor. And, if applicable, the City shall also be entitled to reimbursement of all attorneys' fees and damages which the City had to pay a third party because of the Contractor's failure to comply with this Section. The terms and conditions set forth in this Section shall survive the termination of this Agreement.

B. All documents, including but not limited to, drawings, specifications and data or programs stored electronically or otherwise, prepared by the Contractor and its independent contractors and associates pursuant to this Agreement or related exclusively to the Services described herein shall be owned by the City and may be reused by the City for any reason or purpose at any time. However, the City agrees that the aforesaid documents are not intended or represented to be suitable for reuse by the City or others on any undertaking other than the Work outlined in this Agreement. Any reuse for an undertaking other than for the Work without verification or adaptation by the Contractor, or its independent contractors and associates, if necessary, to specific purposes intended will be at the City's sole risk and without liability or legal exposure to the Contractor.

C. The City and the Contractor agree that upon payment of fees due to the Contractor by the City for a particular design, report, inventory list, compilation, drawing, specification, model, recommendation, schedule, or otherwise, said design, report, inventory list, compilation, drawing, specification, technical data, recommendation, model, schedule, and other instrument produced by the Contractor, as applicable, in the performance of this Agreement, or any Work hereunder, shall

be the sole property of the City, and the City is vested with all rights therein. The Contractor waives all rights of copyright in said design, report, inventory list, compilation, drawing, specification, technical data, recommendation, model, schedule, and other instrument produced by the Contractor in the performance of this Agreement, and hereby assigns and conveys the same to the City whether in the possession or control of the Contractor or not.

D. Notwithstanding any provisions to the contrary contained in this Agreement, the Contractor shall retain sole ownership to its preexisting information not produced and paid for by the City under this Agreement including, but not limited to, computer programs, software, standard details, figures, templates and specifications.

8.0. INSURANCE.

During the term of this Agreement, Contractor shall be responsible for providing the types of insurance and limits of liability as set forth under this Paragraph. The insurance policies provided hereunder by Contractor shall also include coverage with respect to services performed by all agents and independent contractors employed by Contractor to perform any Work hereunder.

A. The Contractor shall maintain comprehensive general liability insurance in the minimum amount of \$1,000,000 as the combined single limit for each occurrence and \$2,000,000 general aggregate with a deductible not less than \$5,000 unless otherwise approved in writing by the City Manager to protect the Contractor from claims of property damages which may arise from any Work performed under this Agreement whether such Work are performed by the Contractor or by anyone directly employed by or contracting with the Contractor.

B. The Contractor shall maintain comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit bodily injury and minimum \$1,000,000 property damage as the combined single limit for each occurrence to protect the Contractor from claims for damages for bodily injury, including wrongful death, as well as from claims from property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Contractor or by anyone directly or indirectly employed by the Contractor.

C. The Contractor shall maintain, during the life of this Agreement, adequate Workers' Compensation Insurance in at least such amounts as are required by law and Employer's Liability Insurance in the minimum amount of \$1,000,000 for all of its employees performing Work for the Client pursuant to this Agreement.

9.0. NOTICE.

Any and all notices required or permitted under this Agreement shall be in writing and shall be sufficient in all respects if (i) delivered personally, (ii) mailed by registered or certified mail, return receipt requested and postage prepaid, or (iii) sent via a nationally recognized overnight courier service to the following:

For CITY:

City of Cocoa
Attn: City Manager
65 Stone Street
Cocoa, FL 32922

For CONTRACTOR:

COTG 2021, LLC

Attn: Felicia Prince, Executive Director

1385 Cypress Ave, Ste 107

Melbourne, Florida 32935

Any Notice given as provided herein shall be deemed received as follows: if delivered by personal service, on the date so delivered; if delivered to an overnight courier service, on the business day immediately following delivery to such service; and if mailed, on the third business day after mailing.

10.0. E-VERIFY.

A. In accordance with Chapter 448.095, Florida Statutes, the Contractor shall register and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of this Contract.

B. The Contractor shall expressly require any subcontractors performing work providing services pursuant to this Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Contract.

C. The Contractor agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the City consistent with the terms of the Contractor's enrollment in the program. This includes maintaining a copy of proof of the Contractor's and subcontractors' enrollment in the E-Verify program.

D. The Contractor must meet this requirement unless:

1. This Agreement is solely for goods-based procurement where no services are provided; or
2. Where the requirement is waived by the City Commission; or

3. The Agreement is being executed with a Sole Proprietor who does not hire employees and therefore is not required to file a Department of Homeland Security Form I-9 (which is the document used for E-Verify); or

4. The Agreement is being executed with a company based outside of the United States of America and does not employ any citizens of the United States of America.

E. A Contractor who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E-Verify program, the Contractor hires or employs a person who is not eligible for employment.

F. Nothing in this section may be construed to allow intentional discrimination of any class of persons protected by law.

11.0. ATTORNEY FEES.

In the event of any action arising under this Agreement, whether or not a lawsuit or other proceeding is filed, each party shall bear its own costs and expenses of such action including, but not limited to, reasonable attorney's fees incurred in any way in connection with the matter, whether incurred before litigation, during litigation, during appeal, or in connection with enforcement of a judgment, including, but not limited to, attorneys' and experts' fees. This shall include fees and costs incurred in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of recoverable attorneys' fees and costs. The reasonable costs shall include costs that are taxable under any applicable statute, rule or guideline, as well as non-taxable costs, including but not limited to, costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, and mediator fees, regardless of whether such costs are otherwise taxable.

12.0. VENUE.

This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida. Venue for any state action or litigation shall be Brevard County, Florida. Venue for any federal action or litigation shall be Orlando, Florida.

13.0. SEVERABILITY.

Should any term or provision of this Agreement be held, to any extent, invalid or unenforceable, as against any person, entity, or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Agreement, to the extent that the Agreement shall remain operable, enforceable, and in full force and effect to the extent permitted by law.

14.0. ENTIRE AGREEMENT.

This Agreement states the entire understanding and agreement between the parties and supersedes

any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this Agreement, save for the representations which are attached to this Agreement as Exhibits. The Contractor recognizes that any representations, statements, or negotiations made by the City staff do not suffice to legally bind the City in a contractual relationship unless they have been reduced to writing and signed by an authorized City representative. This Agreement shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

15.0. NO ASSIGNMENT OR SUBCONTRACT.

Contractor shall not assign or subcontract this Agreement or any rights or any monies due or to become due hereunder without the prior, written consent of the City. Unless specifically stated to the contrary in any written consent to any assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the City and Contractor, and all duties and responsibilities under this Agreement will be for the sole and exclusive benefit of the City and Contractor and not for the benefit of any other party.

16.0. SOVEREIGN IMMUNITY.

The City intends to avail itself of the benefits of Section 769.28, Florida Statutes, and any other statutes and common law governing sovereign immunity to the fullest extent possible. Neither this provision nor any other provision of this Agreement shall be construed as a waiver of the City's right to sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on the City's potential liability under state or federal law, and the cap on the amount and liability of the City for damages, regardless of the number or nature of claims in tort, equity, or contract, may not exceed the dollar amount set by the legislature for tort. Service Provider agrees that City shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, City shall not be liable for any claim or judgment, or portion thereof, to any one person over two hundred thousand dollars (\$200,000.00), or any claim or judgment or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds three hundred thousand dollars (\$300,000.00). Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. This paragraph shall survive termination of this Agreement.

17.0. APPROPRIATIONS.

This Agreement is subject to the annual appropriations of funds by the City Commission. The City has a right to terminate this Agreement for fiscal non-funding at no additional cost or liability to the City.

18.0. FORCE MAJEURE.

Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God; fire; flood; windstorm; explosion; riot; war; sabotage; strike (except involving the Contractor's labor force); extraordinary breakdown of or damage to City's affiliates' facilities; court injunction or order; federal and/or state law and/or regulation; or order by any other regulatory agency, provided that prompt notice of such delay is given by such party to the other and each of the parties hereto shall be diligent in attempting to remove such cause or causes. If any circumstance of Force Majeure remains in effect for sixty (60) days, either party may terminate this Agreement. Monetary damages will not be awarded in the event of Force Majeure.

19.0. CITY PREMISES.

Contractor acknowledges that its employees and agents will behave in an appropriate manner while on City property and while on any residential or commercial private property relating to the performance of Services in accordance with this Agreement and shall, at all times, conduct themselves in a manner consistent with City policies and within the discretion of the City Project Manager or designee. Professional and personal conduct of Contractor's staff shall conform to City's personnel policies and procedures. It is a material breach of this Agreement for any agent or employee of Contractor to behave in a manner which is inconsistent with appropriate conduct or decorum or to behave in any manner that will disrupt the functioning of the City or constitute any level of threat to the safety, health, and/or well-being of any citizen, invitee, licensee, agent, or employee of the City. Contractor agrees to immediately remove any agent or employee if directed to do so by the City Project Manager or designee.

Contractor acknowledges that the City shall not be responsible for injury (including death) to Contractor's employees, agents, officers, or other personnel, nor shall the City be responsible for damage to Contractor's property, which occurs on the City's property, unless the injury is the result of the City's gross negligence or willful misconduct. At all times while on City's premises, Contractor shall comply with all rules and regulations of City.

20.0 MISCELLANEOUS.

- A. As an independent contractor, Contractor shall pay all expenses in connection with its consulting business and Contractor will not incur any indebtedness on behalf of City with this Agreement.
- B. This Agreement shall constitute the entire Agreement between the parties relative to the transaction contemplated herein and neither this Agreement nor any term or provision hereof may be waived, except, by an instrument in writing executed by the City and Contractor.
- C. This Agreement may be amended, extended, or renewed only with the written approval of the parties. There shall be no modification of this Agreement without a writing.
- D. The City and Contractor each represent that they have both shared equally in drafting this

Agreement and no party shall be favored or disfavored regarding the interpretation of this Agreement in the event of a dispute between the parties.

E. The Contractor warrants that it has not employed or retained any company person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any City employee or official, person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award of making of this Agreement.

F. Precautions shall be exercised at all times for the protection of all persons (including City's employees) and property. The safety of all applicable laws, regulations, and codes shall be observed. Hazards arising from the use of vehicles, machinery, and equipment shall be guided or eliminated in accordance with the highest accepted standard of safety. Contractor shall be solely and absolutely responsible and shall assume all liability for the safety and supervision of its principles, employees, contractors, and agents when performing the Services provided hereunder.

G. Contractor shall comply with all requirements of federal, state, and local laws, rules, regulations, standards, and ordinances applicable to the performance of services under this Agreement and the incorporated Exhibits. Contractor shall also secure and maintain any and all permits and licenses required to complete this Agreement.

H. Contractor shall acquire no rights under this Agreement to, and shall not use, the name of the City, either alone or in conjunction with or as a part of any other name, word, mark, picture, logo, design, and/or trademark ("City Marks") in any of Contractor's advertising, publicity, or promotion, to express or imply any endorsement by the City of its Services, or in any other manner (whether or not similar to the uses hereinabove specifically prohibited) without the prior review and written approval by the City, except as expressly permitted herein. No advertisement, publication, or other use of the City Marks shall be published or otherwise promulgated by Contractor without City's prior inspection and written approval. This clause shall survive the expiration or termination of this Agreement.

I. By signing this Agreement, Contractor certifies that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency.
2. Have not, within the preceding five-year period, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
3. Are not presently indicted or otherwise criminally charged by a government entity

(federal, state or local) with commission of any of the offense enumerated in the preceding paragraph.

4. Have not within the preceding five years had one or more public transactions (federal, state or local) terminated for cause or default.

Contractor agrees to notify City within thirty (30) days after the occurrence of any of the events, actions, debarments, proposals, declarations, exclusions, convictions, judgment, indictments, informations, or terminations as described above, with respect to Contractor or its principals.

J. In case of any inconsistency in any of the documents bearing on the Agreement between the City and the Contractor, the inconsistency shall be resolved by giving precedence in the following order:

1. Addenda or change orders to this Agreement entered subsequent to the Effective Date of this Agreement;
2. This Agreement;
3. Exhibits to this Agreement.

Any inconsistency in the work description shall be clarified by the City and performed by the Contractor.

K. At its discretion, during the course of the work, should any errors, ambiguities, or discrepancies be found in the Agreement or specifications, the City at its sole discretion will interpret the intent of the Agreement and work descriptions and the Contractor hereby agrees to abide by the City's interpretation and agrees to carry out the work in accordance with the decision of the City.

L. The Contractor warrants and represents that it complies with all Federal and State requirements concerning fair employment and that Contractor does not and shall not discriminate by reason of race, color, religion, sex, age, national origin, disability, sexual orientation, gender identity or expression, genetic information, or any other category of persons protected pursuant to federal and/or Florida law.

M. No inspection by the City, nor any payment for or acceptance of the whole or part of the items in this Agreement, nor any extension of time, nor any possession taken by the City of the product or services hereunder shall operate as a waiver of (1) any provision of this Agreement, (2) the right to have it fully performed, (3) any power herein reserved by the City or (4) any right to damages under this Agreement. No waiver of any breach of this Agreement shall be held to be a waiver of any other breach. Failure of City to insist upon performance within any time period or upon a proper level or quality of performance shall not act as a waiver of City's right to later claim a failure to perform by Contractor.

N. The City reserves the right to, at its discretion, perform any services related to this Agreement or to retain the services of other Contractors to provide professional services. City does not

guarantee that any work will be assigned to Contractor under this Agreement. The City reserves the right to assign or contract for professional services with any party at its sole discretion. No provision of this Agreement shall be construed to require the City to assign any work or task to the Contractor under this Agreement.

O. Under no circumstances shall actual or direct costs under this Agreement include costs associated with inefficiency, offsite or office overhead, loss of productivity, consequential damages, legal or consulting costs or costs associated with delays caused in whole or in part by the Contractor.

P. Paragraph headings are for the convenience of the parties only and are not to be construed as part of this Agreement.

Q. Contractor shall certify, upon request by City, that Contractor maintains a drug free workplace policy in accordance with Section 287.0878, Florida Statutes. Failure to submit this certification may result in the termination of this Agreement.

R. CONTRACTOR is aware of and agrees to comply with the requirements of Florida Statutes § 287.138. To the extent that, under this Agreement, CONTRACTOR has access to personal identifying information, CONTRACTOR agrees that: CONTRACTOR is not owned by the government of a foreign country of concern; the government of a foreign country of concern does not have a controlling interest in CONTRACTOR; and CONTRACTOR is not organized under the laws of and does not have its principal place of business in a foreign country of concern. Per Florida Statutes § 287.138(1)(c), “foreign country of concern” means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern. Breach of this provision shall be considered a material breach of this Agreement and shall entitle City to, in its sole discretion, terminate this Agreement. CONTRACTOR shall signify their compliance with Florida Statutes § 287.138 by completing the affidavit of compliance attached hereto as **Exhibit B**.

IN WITNESS WHEREOF, the Parties or their duly authorized representatives hereby execute this Agreement on the date first written above.

CITY:

CONTRACTOR:

Stockton Whitten

City Manager

Date: _____

Print: Felicia Prince

Executive Director

Date: _____

ATTEST:

Monica Arsenault

City Clerk

EXHIBIT A
PRICE SCHEDULE

COTG 2021
1220 Prospect Ave, Ste 294 Melbourne FL 32901
321-327-7481 x 1001
COTG2021@gmail.com
Www.COTG21.com



Type of Services	Unit Price	Notes
<i>Drug Testing Services</i>		
DOT (5 Panel)	130	\$180 (flat rate) applied per quarter
Non-DOT (10 - Panel Urine)	127	\$180 (flat rate) applied per quarter
Non-DOT (12 - Panel Urine)	128	\$180 (flat rate) applied per quarter
Non-DOT (13 - Panel Urine)	129	\$180 (flat rate) applied per quarter
Alcohol Testing (Urine)	95	\$180 (flat rate) applied per quarter
Alcohol Testing (Breathalyzer)	50	\$180 (flat rate) applied per quarter
Onsite/ Reasonable Suspicion Non-DOT/DOT	140	\$180 (flat rate) applied per quarter
Workplace Injury Incident	125	\$180 per incident



Drug Testing for Cocoa			
10 Panel Drug Test NON DOT (Urine)	12 Panel Drug Test NON DOT (Urine)	13 Panel drug test NON DOT (Urine)	5 Panel DOT Drug Test (Urine)
AMP-Amphetamines	AMP-Amphetamines	AMP-Amphetamines	AMP- Amphetamines
COC-Cocaine	COC-Cocaine	COC-Cocaine	COC-Cocaine
OPI-Opiates		OPI-Opiates	OPI-Opiates
THC-Marijuana	THC-Marijuana	THC-Marijuana	THC-Marijuana
	PCP-Phencyclidine	PCP-Phencyclidine	PCP- Phencyclidine
MET- Methamphetamines	MET- Methamphetamines	MET- Methamphetamines	
BAR- Barbiturate	BAR- Barbiturate	BAR- Barbiturate	
BZO-Benzodiazepine	BZO-Benzodiazepine	BZO-Benzodiazepine	
BUP-Buprenorphine	BUP-Buprenorphine	BUP-Buprenorphine	
OXY- Oxycodone	OXY- Oxycodone	OXY- Oxycodone	
MTD- Methadone	MTD- Methadone	MTD- Methadone	
	MDMA- Methylenedioxymetham- phetamine ("ecstasy/molly")	MDMA- Methylenedioxymetha- mphetamine ("ecstasy/molly")	
		FYL-Fentanyl	
	MOP (Morphine)		
No PCP, MDMA, MOP or Fentanyl	No OPI or Fentanyl	No MOP	



EXHIBIT B

AFFIDAVIT OF COMPLIANCE WITH FLA. STAT. § 287.138

**FOREIGN COUNTRY OF CONCERN ATTESTATION
(PUR 1355)**

This form must be completed by an officer or representative of an entity submitting a bid, proposal, or reply to, or entering into, renewing, or extending, a contract with a Governmental Entity which would grant the entity access to an individual's Personal Identifying Information. Capitalized terms used herein have the definitions ascribed in [Rule 60A-1.020, F.A.C.](#)

COTC2021, LLC., is not owned by the government of a Foreign Country of Concern, is not organized under the laws of nor has its Principal Place of Business in a Foreign Country of Concern, and the government of a Foreign Country of Concern does not have a Controlling Interest in the entity.

Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated in it are true.

Printed Name: _____

Title: _____

Signature: _____

Date: _____