

RESOLUTION NO. 1486

RESOLUTION APPROVING A SERVICE AGREEMENT WITH CJ COOPER & ASSOCIATES INC. FOR DRUG AND ALCOHOL TESTING PROGRAMS.

WHEREAS, the City of West Branch is committed to ensuring that its employees work in a safe, drug-free environment; and

WHEREAS, it is well recognized that individuals who use illicit drugs or use alcohol are more likely to have workplace accidents and perform their work in an inefficient and substandard manner; and

WHEREAS, the City Council was presented with a Drug and Alcohols Testing Service Agreement, attached to this resolution, at the June 6, 2016 City Council Meeting and discussed this service agreement at that meeting; and

WHEREAS, it is now necessary for the City Council to approve said service agreement.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of West Branch, Iowa that the aforementioned service agreement with CJ Cooper & Associates, Inc. of Hiawatha, Iowa, is hereby approved.

Further, the Mayor is directed to execute the service agreement on behalf of the City.

Passed and approved this 27th day of June, 2016.


Roger Laughlin, Mayor

ATTEST:


Matt Muckler, City Administrator/Clerk

DRUG AND ALCOHOL TESTING SERVICES

THIS AGREEMENT, is made between **C.J. Cooper & Associates, Inc.**, an Iowa TSB corporation located at 1325 Stamy Rd, Hiawatha, IA 52233, hereinafter referred to as **Provider** and **CITY OF WEST BRANCH**, **July 1, 2016**, which shall hereinafter be referred to as the execution date of this agreement. The terms of this agreement shall be continuous from the execution date of this agreement until notified in writing by either party sent certified mail return receipt requested. Either party may terminate this agreement without penalty upon thirty (30) days notice provided in writing to the other party at the address set forth herein. If contract is terminated without 30 day notice in writing Provider may, at it's discretion, issue an early withdrawl penalty equal to the number of active participants multiplied by \$50 each.

Provider provides alcohol and drug testing services to companies that are required to comply with federal alcohol and drug testing regulations; and **CITY OF WEST BRANCH**... has need of a program for alcohol and drug testing of applicants and/or employees and requires alcohol and drug testing services from **Provider**.

In consideration of the mutual covenants and promises set forth, the parties hereby enter into this agreement, the terms and conditions of which shall apply from the execution date of this agreement.

The parties both recognize that state and local laws apply to services covered herein. In particular, certain services may be performed according to regulations established and governed by the State of Iowa. Both parties agree to assure, to the best of their ability, that services provided are rendered according to **all applicable laws and regulations**.

NOW THEREFORE, in consideration of the premises and the mutual promises, covenants, and agreements contained herein, the parties agree as follows:

SCOPE OF SERVICES

Alcohol tests are performed using screening and evidential testing devices approved by the National Highway Traffic Safety Administration (NHTSA) as reflected by publication in the NHTSA Conforming Products List (CPL) by breath alcohol technicians (BATs) trained and certified by the Drug and Alcohol Testing Training Institute (DATTI) to perform such testing.

Drug tests are performed using chain-of-custody collection, testing laboratories certified by the Substance Abuse And Mental Health Services Administration (SAMHSA) for such testing, and medical review officers (MROs) qualified to review and report test results.

All tests, whether alcohol tests or drug tests, are performed in accordance with the regulatory requirements of the State of Iowa for such testing, including all applicable procedural, personnel and equipment guidelines.

Provider will maintain facilities and personnel adequate to the performance of services agreed to be provided to **CITY OF WEST BRANCH**... in particular, **Provider** will maintain trained and certified personnel qualified to perform services provided.

Provider RESPONSIBILITIES, continued

Provider will maintain, in a secure location with controlled access all dated records, information, and notifications, identified by individual, for specific information and records for minimum time periods according to the schedule below and as applicable related to services provided by **Provider** to **CITY OF WEST BRANCH...**

FIVE YEARS

- Alcohol tests ≥ 0.04 , positive drug tests, refusals to test, including alcohol form/drug custody & control form & MRO documentation as applicable.
- Medical explanations of inability to provide specimens
- **CITY OF WEST BRANCH...** documentation for Evidential Breath Testing Devices
- Substance Abuse Professional (SAP) evaluations and related information.

TWO YEARS

- Supervisory training/BAT and drug screen collector training/certification
- Log books for drug and alcohol testing, if used
- Random selection records
- Agreements: testing-collection, laboratory, MRO, consortium

ONE YEAR

- Negative/canceled drug test results; alcohol test results ≤ 0.04

Other (specify)

Provider will not release individual test results to any person, without first obtaining specific written authorization from the tested individual. Nothing in this paragraph shall prohibit **Provider** from releasing, to **CITY OF WEST BRANCH...** or any State or local officials with regulatory authority over the testing program, individual test results, or from releasing individual test results or related information to comply with the requests resulting from a legal action, including but not limited to unemployment hearings, workers' compensation hearings, or other legal hearings, initiated by the tested individual.

Provider will make available to **CITY OF WEST BRANCH...** at location(s) of its choosing, and at a reasonable expense to **CITY OF WEST BRANCH...** for copying and shipping charges, all records related to alcohol and drug testing performed by **Provider** for **CITY OF WEST BRANCH...**, except records containing confidential information, within two business days of notification by **CITY OF WEST BRANCH...** of such request.

Provider RESPONSIBILITIES, continued

Reporting of results to **CITY OF WEST BRANCH...** by **Provider**, if applicable, will be by facsimile transmission, electronic transmission, or first class U.S. Mail; in exceptional circumstances reporting may be by telephone, Provision of results by overnight carrier (Federal Express, UPS, or Express Mail) can be arranged; the charge for this service will depend upon the carrier selected.

RESPONSIBILITIES

CITY OF WEST BRANCH... will provide **Provider** with the most recent applicable alcohol and/or drug testing policies of **CITY OF WEST BRANCH...**

CITY OF WEST BRANCH... will designate a representative and an alternate to whom the **MRO** will report test results and discuss or report other information.

CITY OF WEST BRANCH... will notify **Provider** of any responsibilities with regard to the **Its** Employee Assistance Program as it relates to alcohol and drug testing.

CITY OF WEST BRANCH... represents that the means of obtaining results from the **MRO**, (including, but not limited to, electronic or computer transmission, facsimile transmission (fax), or written communication) will assure that the results and other information remain secure and confidential with distribution of or access to such information to **CITY OF WEST BRANCH...** officials with a business need for the information only.

CITY OF WEST BRANCH... acknowledges that performance of necessary verification procedures may be dependent upon cooperation by **CITY OF WEST BRANCH...** representatives, tested individuals, and/or personal physicians and/or health care providers that may process vital medical history information.

CITY OF WEST BRANCH... acknowledges that alcohol testing results ≥ 0.04 or positive drug test results reported by the **MRO** do not indicate that a tested individual is an alcoholic or a drug addict, respectively.

ASSIGNED RESPONSIBILITIES

CITY OF WEST BRANCH... and **Provider** agree that responsibility for the following procedures and services is as designated below. The designee for each procedure or service agrees to assure that each procedure or service is performed according to all applicable regulatory requirements and in accordance with current and accepted professional standards of practice.

Selection/provision of alcohol testing services	<input type="checkbox"/> CITY OF WEST BRANCH...	<input checked="" type="checkbox"/> Provider
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Selection/provision of drug testing collections	<input type="checkbox"/> CITY OF WEST BRANCH...	<input checked="" type="checkbox"/> Provider
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Selection/provision of drug testing laboratory services	<input type="checkbox"/> CITY OF WEST BRANCH...	<input checked="" type="checkbox"/> Provider
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Random selection for drug and/or alcohol testing	<input type="checkbox"/> CITY OF WEST BRANCH...	<input checked="" type="checkbox"/> Provider
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Blind specimen testing for quality assurance purposes	<input type="checkbox"/> CITY OF WEST BRANCH...	<input checked="" type="checkbox"/> Provider
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Other (specify): _____ _____	<input type="checkbox"/> CITY OF WEST BRANCH...	<input type="checkbox"/> Provider
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Other (specify): _____ _____	<input type="checkbox"/> CITY OF WEST BRANCH...	<input type="checkbox"/> Provider
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Additional:

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FEES AND PAYMENT

FEES

Fees for services provided by **Provider** to **CITY OF WEST BRANCH...** will be in accordance with the FEES SCHEDULE hereby incorporated by attachment into this agreement.

FEES CHANGES

The price for services rendered under this agreement will not change unless **Provider** notifies **CITY OF WEST BRANCH...** in writing (30) days in advance of a price change. If **CITY OF WEST BRANCH...** does not agree to the new price, **Provider**, at its sole discretion, may continue to provide agreed upon services at the then current price for the duration of the agreement, or may discontinue the provision of services on the date the new schedule of fees would take effect, subject to severability provisions described elsewhere in this agreement.

SIGNIFICANT CHANGES IN SERVICES PROVIDED

If during the term of this agreement there is a significant change in the requirements of the **Provider**, or other services covered under this agreement as the result of regulatory changes, or other changes mandated by federal or state law, both parties agreed to renegotiate the services and fees provided herein, subject to severability provisions described elsewhere in this agreement.

PAYMENT

Provider will invoice **CITY OF WEST BRANCH...** for all services provided on a monthly basis. Invoicing is weekly with terms 1% discount if paid in 10 days net thirty (30) days after the date of any invoice. Overdue payments are subject to additional interest and service charges. In the case of failure of **CITY OF WEST BRANCH...** to make timely payments, **Provider** may continue to perform its obligations as per this contract and be entitled to recover all payments for services rendered according to this contract, including interest and service charges on late payments, and also including expenses of collection and reasonable attorney's fees.

GENERAL TERMS AND CONDITIONS:

TERM

All responsibilities, obligations and liabilities shall survive the terms of this agreement.

INDEPENDENT CONTRACTORS

Both parties to this agreement are independent contractors, and nothing contained herein shall be construed to place the parties in the relationship of partners, joint venture, or employer-employee, and neither party shall have the power to obligate or bind the other whatsoever beyond the terms of this agreement.

RESPONSIBILITY FOR CITY OF WEST BRANCH... POLICY AND PROGRAM

The parties understand and agree that **Provider** does not make any employee decisions for employer such as hiring of applicants, termination, discipline or retention of any employee or former employee and that **CITY OF WEST BRANCH...** has sole responsibility for all such decisions. **Provider** shall not be responsible for any damages resulting from acts or omissions of the **CITY OF WEST BRANCH...** under its substance abuse policy.

SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, the parties shall, if possible, agree on a legal, valid and enforceable substitute provision which is as similar in effect to the deleted provision as possible. The remaining portion of the Agreement not declared illegal, invalid or unenforceable shall, in any event, remain valid and effective for the term remaining unless the provision found illegal, invalid or unenforceable goes to the essence of this Agreement. Either party has the right to terminate this contract, for any reason whatsoever, upon 30 business days notice by the terminating party.

FORCE MAJEURE

In no event shall **Provider** have any responsibility or liability to **CITY OF WEST BRANCH...** for any failure or delay in performance by **Provider** which results from or is due to, directly or indirectly and in whole or in part, any cause or circumstances beyond **reasonable control** of the **Provider**. Such causes and circumstances shall include but are not limited to acts of God, acts of **CITY OF WEST BRANCH...** rules or regulations or orders of any governmental authority or agency thereof (whether civil, military, executive, legislative, judicial, or otherwise), strikes or other concerted actions of workers, lockouts, or other labor disputes or disasters, accidents, wars, riots, rebellion, sabotage, insurrection or civil disturbances, difficulties or delays in private or public transportation, or any other cause beyond **Provider's** reasonable control.

WAIVER

The failure of either party to exercise or enforce any right conferred upon it under this Agreement shall not be deemed to be a waiver of any such right, nor operate to bar the exercise or performance of any right at any time.

INDEMNIFICATION

CITY OF WEST BRANCH... shall indemnify, defend and hold harmless **Provider, Provider's** directors, officers, agents and employees, and each of them, from and against any and all claims, suits, and damages of whatever nature made or asserted by a present or former employee or agent or applicant for employment of **CITY OF WEST BRANCH...**, of its party, subsidiary or affiliate companies, arising out of or in any way related to services provided by the **Provider** under this Agreement, related to negligent, fraudulent, or illegal action or omission of **CITY OF WEST BRANCH...** or its employees, agents, or related personnel. **CITY OF WEST BRANCH...** agrees to indemnify and hold harmless **Provider**, its affiliates from any loss, damage, or claim brought by third parties (including its tested individual) resulting from any willful or negligent act or omission on the part of **CITY OF WEST BRANCH...** or its representatives arising out of the contract.

Provider shall indemnify, defend and hold harmless **CITY OF WEST BRANCH...**, its directors, officers, agents and employees, from and against any and all claims, suits, and damages of whatever nature made or asserted by a present or former employee or agent of **CITY OF WEST BRANCH...**, arising out of or in any way related to services provided by the **Provider** under this Agreement, related to negligent, fraudulent, or illegal action or omission of **Provider** or **Provider's** employees, agents, or related personnel. **Provider** agrees to indemnify **CITY OF WEST BRANCH...** from and against any and all claims arising out of its submission of data or analytical results which are false or incorrect as a result of willful, intentional, or negligent acts or omissions by **Provider** personnel.

GOVERNING LAW

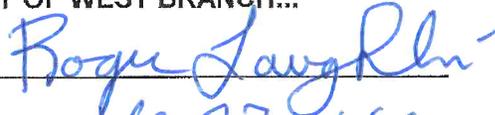
The provisions of this Agreement shall be construed, interpreted and governed by the substantive laws of the State of Iowa, including all matters of construction, validity, and performance but without giving effect to Iowa choice-of-law or conflict-of-law principles.

ENTIRE AGREEMENT

This agreement represents the entire agreement between **Provider** and **CITY OF WEST BRANCH...** This agreement supersedes all prior agreements, understanding, negotiations and discussions, written or oral, and may be modified only by a written document signed by both **Provider** and **CITY OF WEST BRANCH...**

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year executed below:

C.J. Cooper & Associates, Inc.
By: 
Date: 5/23/16

CITY OF WEST BRANCH...
By: 
Date: 6-27-16

FEES SCHEDULE

CITY OF WEST BRANCH... agrees to pay **Provider** \$35.00 per breath alcohol test (DOT and/or NON) Confirmations for Breath Alcohol Test is \$25.00, if needed.

CITY OF WEST BRANCH... agrees to pay **Provider** \$35.00 per **DOT** drug test when collected at **provider** (Includes Collection, Lab & MRO fee)**

CITY OF WEST BRANCH... agrees to pay **Provider** \$50.00 per **DOT** drug test when collected @ job site (Includes Collection, Lab & MRO fee)
Mileage fee of .55/mile will apply for on-site collections

CITY OF WEST BRANCH... agrees to pay **Provider** \$40.00 per **Non DOT** drug test when collected at **provider** **
If collection is at a different collection site instead of **Provider** then it's \$25.00 per **Non DOT** drug test plus collection site fee**

CITY OF WEST BRANCH... agrees to pay **Provider** \$50.00 per **Non DOT** drug test when collected @ job site (Includes Collection, Lab & MRO fee)
Mileage fee of .55/mile will apply for on-site collections

CITY OF WEST BRANCH... agrees to pay **Provider** \$25.00 per drug for confirmation on **Non DOT** tests, if needed or requested

CITY OF WEST BRANCH... agrees to pay **Provider** \$75.00 after hours collection fee and \$50 during business hours collection fee for any Drug and/or Alcohol tests done by **Provider** at job site or hospital. **After hours pager number 319-929-9651** (post-accident or reasonable suspicion)

****CITY OF WEST BRANCH...** may choose to pay the collection site of their choice directly for all and any administrative and/or collection fees. There is no collection fee when done at/or by **Provider**.

FEE SCHEDULE, Continued

CONSULTATION

CITY OF WEST BRANCH... agrees to pay **Provider**, in addition to the above charges for the services of the **Provider**, calculated at the rates noted below, for time involved in program-related issues such as substance abuse professional evaluations, reviews of substance abuse professional evaluations, assistance with audits by CITY OF WEST BRANCH... or DOT, consultation with employer on drug testing issues, support of arbitration, grievance and appeal proceedings and if necessary as an expert witness. Such services will be provided only on a pre-approved basis at CITY OF WEST BRANCH... request. Reasonable travel and/or miscellaneous expenses will also be charged as applicable.

DOT Physical done at C.J. Cooper & Associates (by appointment) \$90.00

(Our physicals are performed by Physicians listed on the National Registry per FMSCA regulation effective 5/21/2014.)

Annual Administrative Fee \$90.00

CITY OF WEST BRANCH... will reimburse **Provider** reasonable administrative, copying, and shipping charges for special requests for records, results, or other information.

AMENDMENTS AND/OR DISCUSSION

Please sign & return this page to our office.

**CONTRACT, page 10
INDEMNIFICATION**

CITY OF WEST BRANCH... shall indemnify, defend and hold harmless **Provider, Provider's** directors, officers, agents and employees, and each of them, from and against any and all claims, suits, and damages of whatever nature made or asserted by a present or former employee or agent or applicant for employment of the **CITY OF WEST BRANCH...**, of its party, subsidiary or affiliate companies, arising out of or in any way related to services provided by the **Provider** under this Agreement, related to negligent, fraudulent, or illegal action or omission of **CITY OF WEST BRANCH...** or **Its** employees, agents, or related personnel. **CITY OF WEST BRANCH...** agrees to indemnify and hold harmless **Provider**, its parents, subsidiaries, and affiliates from any loss, damage, or claim brought by third parties (including **Its** tested individual) resulting from any willful or negligent act or omission on the part of **CITY OF WEST BRANCH...**, or **Its** representatives arising out of the contract.

Provider shall indemnify, defend and hold harmless **CITY OF WEST BRANCH...**, **Its** directors, officers, agents and employees, from and against any and all claims, suits, and damages of whatever nature made or asserted by a present or former employee or agent of **CITY OF WEST BRANCH...**, arising out of or in any way related to services provided by the **Provider** under this Agreement, related to negligent, fraudulent, or illegal action or omission of **Provider** or **Provider's** employees, agents, or related personnel. **Provider** agrees to indemnify **CITY OF WEST BRANCH...** from and against any and all claims arising out of its submission of data or analytical results which are false or incorrect as a result of willful, intentional, or negligent acts or omissions by **Provider** personnel.

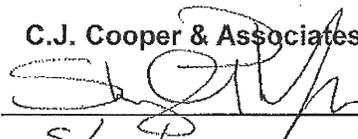
GOVERNING LAW

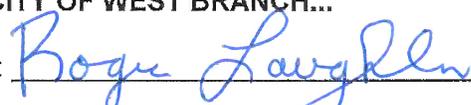
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This agreement represents the entire agreement between **Provider** and **CITY OF WEST BRANCH...** This agreement supersedes all prior agreements, understanding, negotiations and discussions, written or oral, and may be modified only by a written document signed by both **Provider** and **CITY OF WEST BRANCH...**

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