

EVB/TLK

November 16, 2016

AGREEMENT BETWEEN THE CITY OF AKRON AND THE COUNTY OF SUMMIT,  
OHIO

This Agreement is effective as of January 1, 2016, between the City of Akron, Ohio, a charter municipal corporation ("the City"), acting by and through its Director of Finance, duly authorized by Ordinance No. 294-2016, and the County of Summit, Ohio ("the County"), with its principal place of business at 175 South Main Street, Akron, Ohio, by its Executive, duly authorized by County Council Resolution No. \_\_\_\_\_.

RECITALS

A. The City has entered into an Agreement with SUMMA Health System, d.b.a. SUMMA Center for Corporate Health, an Ohio non-profit corporation ("SUMMA"), for the provision of certain professional services to provide the collection, testing, and medical review services for drug and alcohol testing.

B. The City has determined that by offering the County to fully participate in the City's drug and alcohol testing contract with SUMMA, the City and the County will reduce costs and increase the efficiency of operations.

C. In order for the County to participate in the City's drug and alcohol testing services, the City and County must execute this Agreement and be bound by its terms and conditions and by the terms and conditions of the City's Agreement with SUMMA.

NOW THEREFORE, in consideration of the mutual covenants, promises, conditions and terms to be kept and performed, it is agreed between the parties hereto as follows:

SECTION 1. TERM AND TERMINATION.

A. Term. The term of this Agreement shall be from January 1, 2017, to December 31, 2019.

B. Early termination/penalties. The County may terminate this Agreement upon 90 days written notice to the City. If the County elects to terminate this Agreement prior to December 31, 2019, it shall pay the City on a pro-rata basis for the costs incurred by the City for the services provided to the County up to the date of termination.

C. Termination by the City. The City may terminate this Agreement and participation by the County in the drug and alcohol testing services immediately upon written notice to the County for breach of any duties states in Section 3. In the event of termination of this Agreement by the City, the County shall be required to pay the City on a pro-rata basis for the costs incurred by the City for the provision of services to the County for drug and alcohol testing up to the date of termination.

SECTION 2. SERVICES TO BE PROVIDED BY THE CITY.

The City shall provide the following services:

- A. Submit to SUMMA payment for all services performed for the County.

SECTION 3. DUTIES AND RESPONSIBILITIES OF THE COUNTY.

The County shall have the following duties and responsibilities to:

- A. Pay the City the fees as set forth in Exhibit A, the Agreement entered into between the City, County and SUMMA.
- B. Provide SUMMA with copies of the County's drug and alcohol testing policies and procedures.
- C. Manage and coordinate the County's drug and alcohol testing programs.
- D. Communicate with County employees concerning SUMMA drug and alcohol testing.

SECTION 4. REPORTS AND RECORDS.

Each party to this Agreement is responsible for the maintenance and retention of their own reports and records.

SECTION 5. NOTICES.

- A. All notices and demands required or permitted by either party under this Agreement shall be served upon the other party by personal delivery, by registered or certified United States mail, postage prepaid, return receipt requested, or by nationally recognized overnight courier (such as FedEx or UPS), addressed to the respective parties at their respective addresses as set forth below:

To Akron:

Eve V. Belfance  
Director of Law  
161 South High Street, Suite 202  
Akron, Ohio 44308

Donald Rice  
Director of Human Resources  
146 South High Street  
Suite 130 CitiCenter Building  
Akron, Ohio 44308

To Summit County: Deborah S. Matz  
Director of Law, Insurance and Risk Management  
175 South Main Street  
Akron, Ohio 44308

B. All notices are effective upon receipt. A party may change its address by giving written notice to the other party in accordance with this Article.

#### SECTION 6. DEFAULT.

A. If the County defaults under this Agreement, the City shall have the right to pursue any remedy available at law or in equity as a result of such default including, without limitation, the right to recover damages against the County for the County's default and/or to demand specific performance of this Agreement.

B. In the event that the City defaults under this Agreement or fails to consummate this Agreement for any reason other than the County's default, the County shall have the right to pursue any remedy available at law or in equity as a result of such default including, without limitation, the right to recover damages against the County for the County's default and/or to demand specific performance of this Agreement.

#### SECTION 7. GOVERNING LAW.

The parties hereto expressly agree that the terms and conditions of this Agreement, and the subsequent performance hereunder, shall be construed and controlled in accordance with the laws of the State of Ohio. Any courts of competent jurisdiction within Summit County, State of Ohio, shall be the proper forum for bringing any action to enforce or construe the provisions of this Agreement.

#### SECTION 8. SEVERABILITY.

It is the intention of the parties that the provisions of this Agreement will be enforceable to the fullest extent permissible under applicable law, and that the unenforceability of any provision or provisions of this Agreement by such law will not render unenforceable, or impair, the remainder of the Agreement. If any court of competent jurisdiction is unable to construe any provision of this Agreement or holds any part thereof to be invalid, such holding shall in no way affect the validity of the remainder of this Agreement.

#### SECTION 9. ASSIGNMENT.

This Agreement is not assignable in whole or in part by either party without the written consent of the other, and any attempted assignment shall be deemed null and void.

SECTION 10. WAIVER

No waiver of any breach or failure by either party to enforce any of the terms or conditions of this Agreement at any time will, in any manner, limit or waive such party's right thereafter to enforce and compel strict compliance with every term and condition hereof.

SECTION 11. FORCE MAJEURE

No delay in or failure of performance by either party under this Agreement will be considered to be a breach hereof if and to the extent that such delay or failure of performance is caused by an occurrence or occurrences beyond the reasonable control of the party affected. The foregoing will not be considered to be a waiver of either party's obligations under this Agreement, and as soon as such occurrence or occurrences cease, the party affected thereby will promptly fulfill its obligations under this Agreement which accrued during such occurrence or occurrences.

SECTION 12. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the City and County with respect to the subject matter hereof. No modification of this Agreement will have any force or effect unless such modification is in writing and signed by both parties.

SECTION 13. EQUAL EMPLOYMENT OPPORTUNITY

The County agrees in performing its services under this Agreement, to abide by the terms and provisions of Chapter 34 of the Code of Ordinances of the City of Akron, Ohio, regarding public contracts as if the same be fully written herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2016.

COUNTY OF SUMMIT, OHIO

By: \_\_\_\_\_  
Ilene Shapiro  
Executive

APPROVED AS TO FORM:

\_\_\_\_\_  
Deborah S. Matz  
Director, Department of Law, Insurance and Risk Management  
County of Summit

CITY OF AKRON, OHIO

By: \_\_\_\_\_  
Diane Miller-Dawson  
Director of Finance

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
Eve V. Belfance  
Director of Law  
City of Akron