SERVICE AGREEMENT

THIS AGREEMENT, entered into this 1st day of January, 2024 (the "Effective Date"), by and between JOHNSON COUNTY, KANSAS (hereinafter the "COUNTY"), and AVERTEST, LLC DBA AVERHEALTH (hereinafter the "CONTRACTOR")

WITNESSETH:

WHEREAS, the COUNTY solicited proposals for Request for Proposal No. 2023-019 ("RFP"), for drug testing services as stated in the RFP; and

WHEREAS, the CONTRACTOR submitted a proposal in response to the RFP; and

WHEREAS, on December 7, 2023, the Board of County Commissioners of Johnson County, Kansas (hereinafter the "BOARD") authorized a contract with the CONTRACTOR for the purchase of SERVICES by the COUNTY; and

WHEREAS, the COUNTY and CONTRACTOR hereby agree to accept the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the above and foregoing recitals, the mutual promises and covenants hereinafter given, and for other good and valuable considerations, the parties hereto agree as follows:

ARTICLE I
Purpose

1.1 Purpose. The COUNTY hereby engages the services of CONTRACTOR, as described in Section 5 – Scope of Services of the RFP ("SERVICES"), and the CONTRACTOR hereby agrees to provide the COUNTY with such SERVICES in accordance with, and subject to, the terms and conditions of this Agreement.

ARTICLE II
Nature and Scope of Services

2.1 Nature of Services. The CONTRACTOR shall, at all times, faithfully, diligently, earnestly and industriously, and to the best of the ability, experience and skills of the personnel it provides, perform all duties and responsibilities necessary to provide the COUNTY with the highest level of quality of professional services in an expeditious and professional manner, consistent with the purpose and requirements of this Agreement and the COUNTY'S interests and objectives.

2.2 The professional services to be provided by CONTRACTOR shall be governed by the terms and conditions of this Agreement, and any exhibits attached hereto, and, unless otherwise provided for, the respective terms, conditions, specifications and representations contained within the documents enumerated hereinbelow, which are incorporated herein by reference, and which together with the terms and conditions of this Agreement, and any exhibits attached hereto, comprise the Contract Documents:

.1 The COUNTY'S Request for Proposal No. 2023-019, and any amendments or addenda issued thereto (collectively hereinafter the "RFP");

.2 The CONTRACTOR'S written proposal duly submitted in response to the RFP (the "Proposal"); and

.3 CONTRACTOR'S proposed cost proposal duly submitted to the COUNTY pursuant to the requirements of the RFP, unless such proposed cost proposal has otherwise subsequently been revised and/or updated and submitted by CONTRACTOR and has been acknowledged and accepted by COUNTY (hereinafter "Form 6"), attached hereto as **Exhibit A** and incorporated herein by reference.

2.3 It is hereby acknowledged and agreed that the RFP and Proposal shall be on file with the County's Financial Management and Administration office, Purchasing Division, 111 South Cherry, Suite 2400, Olathe, Kansas 66061, or such other office or location as the COUNTY may from time to time designate.

2.4 Should any ambiguity, inconsistency or conflict arise in the interpretation of the Contract Documents, the same shall be resolved by reference first to the terms and conditions of this Agreement, and any exhibits attached hereto, and then by reference to the terms, conditions, scope, technical specifications, provisions and representations contained within the documents in the order enumerated in Paragraph 2.2 above.

2.5 CONTRACTOR shall provide all reports and other documents evidencing CONTRACTOR's compliance with the College of American Pathologists Forensic Drug Testing Program upon request of COUNTY.

ARTICLE III
Term

3.1 Term. This Agreement is effective as of January 1, 2024 ("Effective Date"). The initial term of this Agreement shall be for a twenty-four (24) month period beginning on the Effective Date. The parties may renew this Agreement for three (3) additional twenty-four (24) month periods, on terms and conditions mutually agreed upon and evidenced by supplemental writing executed by duly authorized representatives of the parties.

ARTICLE IV
Compensation

4.1 Compensation. As compensation for SERVICES rendered by the CONTRACTOR hereunder, the COUNTY agrees to pay the CONTRACTOR an annual amount not to exceed of **One Hundred Seventy-Five Thousand Dollars ($175,000.00)** of the Agreement (the "Contract Price"). The Contract Price shall be full compensation for labor, expenses, subsistence, transportation, overhead and profit incurred in performance of the described basic services under this Agreement. CONTRACTOR understands and acknowledges there is no guaranteed minimum of quantity of services to be purchased or required by COUNTY from CONTRACTOR under this Agreement. Payments shall be made within thirty (30) days of COUNTY receipt of invoices from the CONTRACTOR documenting the services and deliverables rendered and deemed acceptable to the COUNTY.

4.2 Optional or Additional Services. Should the CONTRACTOR be requested to provide optional or additional services for the COUNTY relative to, and in connection with, this

Agreement, the CONTRACTOR shall be compensated for such services rendered and expenses reasonably incurred in the amount and rates as may be mutually agreed to by the parties hereto.

ARTICLE V
Coordination of Services to be Provided

5.1 Coordination of Services; County Representative. CONTRACTOR shall coordinate all services to be provided under this Agreement with a designated representative from the COUNTY (the "COUNTY Representative"). Whenever this Agreement requires, or it becomes necessary for, the CONTRACTOR to advise, provide or communicate information to, or seek the approval of, the COUNTY in matters relating to the CONTRACTOR'S services hereunder, CONTRACTOR shall direct all such communications and requests for approval to the COUNTY Representative. Further, the CONTRACTOR shall, upon request, meet with the COUNTY Representative on a periodic basis to coordinate any and all activities, services and responsibilities, and provide feedback on current deliverables and future needs required of the CONTRACTOR under this Agreement.

ARTICLE VI
Assignment and Subcontracting

6.1 No Assignment. The CONTRACTOR shall not assign, transfer, convey, sublet or otherwise dispose of neither this Agreement nor any of its rights and obligations hereunder, without the prior written consent of the COUNTY, but in no event shall such consent relieve the CONTRACTOR from its obligations under the terms of this Agreement.

6.2 Subcontracting. It is understood and acknowledged by the parties that should the CONTRACTOR intend to subcontract some services required hereunder to parties other than those that may be named in its proposal to the COUNTY, the CONTRACTOR agrees to obtain prior written consent from the COUNTY of any such subcontracting relationships, and of the services such subcontractors are to perform. Notwithstanding this procedure, such subcontractors shall at all times remain under the direction and control of the CONTRACTOR and not the COUNTY, and the CONTRACTOR shall remain fully liable to the COUNTY for the proper discharge of all the services required hereunder regardless of by whom they are performed.

ARTICLE VII
Agreement Status

7.1 Agreement Status. This Agreement is, and shall be deemed, an independent contract for services and the CONTRACTOR and all persons providing services on behalf of the CONTRACTOR under this Agreement shall be deemed independent contractors and shall not be deemed under any circumstances as employees of the COUNTY for any purpose and shall not be entitled to any of the benefits that Johnson County offers to its employees including, without limitation, unemployment insurance, workers compensation insurance, health insurance, retirement benefits or paid leave of any sort.

ARTICLE VIII
Amendment

8.1 Amendment. This Agreement may be amended by supplemental writing mutually agreed to and executed by duly authorized representatives of the parties hereto.

ARTICLE IX
Notices

9.1 Notices. Any notices, bills, invoices, reports, payment of correspondence required or permitted by or from one party to the other hereunder shall be made in writing and sent electronically, delivered personally, or by United States mail, postage prepaid, to the relevant designated representative for the County's participating agency and to Contractor set forth below:

CONTRACTOR: Avertest, LLC dba Averhealth
Lauren Berens, Government Proposal Writer
2916 W. Marshall St., Suite A
Richmond, VA 23230
Email: Contract matters: Contracts@averhealth.com
Bills, invoices, reports, payment: Accounting@averhealth.com

ARTICLE X
Termination

10.1 Termination. The COUNTY and CONTRACTOR agree the following shall prevail with respect to termination of this Agreement:

.1 **For cause.** Should CONTRACTOR be found in violation of any of the terms and conditions of this Agreement, it shall be deemed in breach of this Agreement. The COUNTY shall thereupon notify the CONTRACTOR in writing of such violation, giving CONTRACTOR fifteen (15) days to cure such breach. Should CONTRACTOR fail to cure such breach, the COUNTY shall then have the right to terminate this Agreement for cause by giving written notice to CONTRACTOR of such termination and specifying the effective date of such termination. The effective termination date shall be no less than ninety (90) days following the initial breach notification. In the event of termination for cause, CONTRACTOR shall be entitled to just and equitable compensation for services satisfactorily performed by the CONTRACTOR through the date of termination specified by the COUNTY, less costs and damages incurred by the COUNTY as a result of the CONTRACTOR'S breach.

.2 **For lack of funds.** Should, for whatever reason, adequate funding not be made available to the COUNTY to support or justify continuation of the level of services to be provided by the CONTRACTOR under this Agreement, the COUNTY may terminate or reduce the amount of service to be provided by the CONTRACTORS under this Agreement. In such event, the COUNTY shall notify the CONTRACTOR in writing at least ninety (90) days in advance

of such termination or reduction of services for lack of funds, in which case, the CONTRACTOR shall be reimbursed for all costs and expenses incurred prior to the date of such notice.

.3 **For convenience.** The COUNTY reserves the right to terminate this Agreement, at any time, for the convenience of the COUNTY, without penalty or recourse, by giving the CONTRACTOR written notice of such termination ninety (90) days prior to termination. The CONTRACTOR shall be entitled to just and equitable compensation for services satisfactorily performed by the CONTRACTOR through the date of termination specified by the COUNTY.

.4 **For lack of payment.** The CONTRACTOR reserve the right to terminate this Agreement for lack of payment by the COUNTY for services performed by the CONTRACTOR under this Agreement and accepted by the COUNTY.

ARTICLE XI
Waiver of Breach

11.1 Waiver of Breach. The waiver of any party hereto of a breach of any of the provisions of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

ARTICLE XII
Governing Law; Venue

12.1 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Kansas.

12.2 Venue. In the event that the parties hereto are unable to resolve any controversy or claim arising out of, or relating to, this Agreement or the making, performance or interpretation of it without resort to the courts, the parties agree that exclusive jurisdiction and venue over such matter shall be in the District Court of Johnson County, Kansas.

ARTICLE XIII
Miscellaneous

13.1 Good Standing. CONTRACTOR shall be authorized to do business in the State of Kansas and must maintain good standing pursuant to the laws of this State and any other applicable law.

13.2 Warranty of Ability to Perform. CONTRACTOR shall warrant that there is no action, suit, proceeding, inquiry or investigation at law or equity, before or by a court, governmental agency, public Board or body, pending or threatened, to the best of the CONTRACTOR'S knowledge, that would in any way prohibit, restrain or enjoin the execution or delivery of the CONTRACTOR'S obligations, diminish the CONTRACTOR'S obligations, or diminish the CONTRACTOR'S financial ability to perform the terms of this Agreement. During the term of this Agreement, if any of the aforementioned events occur, the CONTRACTOR must immediately notify,

in writing, the COUNTY of the same.

13.3 Governmental Restrictions. In the event any governmental restriction is imposed that would necessitate alteration of the material, quality, workmanship of the goods/services provided under this Agreement prior to delivery, CONTRACTOR shall immediately notify the COUNTY, in writing, indicating the specific regulation that necessitates the alteration.

13.4 Insurance. See Section 10 of the RFP.

13.5 Documents and Records. CONTRACTOR shall maintain full and accurate records of all matters covered by this Agreement, and the COUNTY shall have access during regular business hours to such records. Access to such records shall extend to appropriate federal, state and other local authorities. All survey notes, reports, design plans, specifications, special studies, records, Project deliverables and other data prepared under this Agreement shall become the property of the COUNTY upon completion or termination of the services of the CONTRACTOR and payment by the COUNTY to the CONTRACTOR for such services. All materials produced in performance of work under this Agreement shall be and become the sole property of the COUNTY, and the CONTRACTOR shall have no right or property interest in any produced materials and hereby agrees that it shall not reserve any interest by license, copyright or other proprietary claim in or to any such materials.

13.6 Nondiscrimination. CONTRACTOR agrees to not discriminate on the basis of race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity or expression, pregnancy, genetic information, military service or other circumstance prohibited by federal, state or local law, rule or regulation in its operation, management and employment practices and with respect to availability and accessibility of products and services to the public. CONTRACTOR agree to comply with all applicable laws of the State of Kansas and of the United States of America, regarding such non-discrimination and equality of opportunity.

13.7 Funding Clause. This Agreement and any renewal thereof, is subject to the provisions of the Kansas Cash Basis Law, *K.S.A. 10-1101 et seq*., and amendments thereto (the "Act"). By virtue of this Act, the COUNTY is obligated only to pay periodic payments as contemplated herein as may lawfully be made from funds budgeted and appropriated for that purpose during the COUNTY'S current budget year (i.e., January 1 to December 31) or from funds made available from any lawfully operated revenue producing source.

13.8 Confidentiality. To the extent permitted by law, each party agrees that it will not disclose any privileged or confidential information obtained or learned from the other party as a result of this Agreement, except as may be required in connection with any audit conducted by a third-party payor or as required by law, regulation or order of a court with jurisdiction or as set forth below. Without limiting the generality of the foregoing, the parties agree that they will maintain the confidentiality of any medical records, business or financial records, supply and service information, marketing information, personnel information, information contained or encompassed in all computer hardware, algorithms, software and other technology, and/or matters of practices of the other as to other technology, and/or matters or practices of the other to which they have access or knowledge pursuant to this Agreement ("Proprietary Information") during the term of this Agreement and thereafter, regardless of the reason for the termination of this Agreement. Upon expiration or termination of this Agreement or upon demand, whichever is earlier, each party will immediately return any and all Proprietary Information belonging to the other party.

13.9 Force Majeure. This Agreement is subject to, and CONTRACTOR shall not be responsible or liable for, delay, directly or indirectly resulting from or contributed to by any foreign or domestic embargoes, seizures, acts of God, insurrections, pandemic war or the adoption or enactment of any law, ordinance, regulation, ruling or order directly or indirectly interfering with or rendering more burdensome the delivery of SERVICES hereunder. In the event any performance hereunder is suspended or delayed by reason of any one or more of the occurrences aforesaid, any and all performance so suspended or delayed shall be made after such disabilities have ceased to exist.

13.10 Open Records. The terms, conditions, requirements and obligations set forth in this Agreement shall be subject to the Kansas Open Records Act, K.S.A. 45-215 et seq., and amendments thereto, and any applicable federal or state laws, or court order.

13.11 Severability. All agreements, covenants and clauses contained herein are severable, and in the event any of them shall be deemed or held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be interpreted as if such unconstitutional, invalid or unenforceable agreements, clauses and covenants were not contained herein.

13.12 Entire Agreement. This Agreement represents the entire agreement between the COUNTY and CONTRACTOR with respect to the provision of professional services required of the CONTRACTORS for the COUNTY, and supersedes all prior understandings or promises, whether oral or written, between the parties pertaining to or in connection with this Agreement.

13.13 Arbitration, Damages, Warranties. Notwithstanding any language to the contrary, no interpretation of this contract shall find the County has agreed to binding arbitration, or the payment of liquidated damages or penalties. Further, the County does not agree to pay attorney fees, costs, or late payment charges beyond what is required by law, and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the County, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

13.14 Disclaimer of Liability. No provision of this Agreement will be given effect that attempts to require the County to defend, hold harmless, or indemnify any contractor or third party for any of its negligent acts or omissions. The liability of the County is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, et seq.).

13.15 Minimum Cyber of Security Standards. CONTRACTOR shall comply with the following cyber security standards: (i) perform routine backup and archiving for the length of the Agreement term; (ii) meet industry standard security measures at all data centers; (iii) enact network security and firewall protection; (iv) perform ongoing maintenance of all operating systems and applications in compliance with industry standards; and (v) perform regularly scheduled penetration testing and remediation of any identified vulnerabilities.

13.16 Third-Party Security Audits. CONTRACTOR shall allow the County or a third-party auditing firm to conduct an annual SSAE 18 audit. The CONTRACTOR shall comply with the terms of the audit. Upon the County's request, CONTRACTOR shall provide the County with a copy of the audit results. In the event CONTRACTOR is found noncompliant with audit standards, CONTRACTOR shall remediate and provide County with evidence of such remediation. This Agreement may be terminated if CONTRACTOR fails to comply with this provision and industry security standards.

13.17 Data Breach Response. CONTRACTOR shall immediately notify County in writing if CONTRACTOR suspects or becomes aware of any unauthorized access to the County's data. CONTRACTOR shall, at its own expense, fully cooperate with the County to prevent or stop the underlying cause of a breach. Further, CONTRACTOR shall fully and immediately comply with all applicable state and federal data breach laws and regulations.

13.18 Publicity. Neither party shall use the other party's name, trademarks, or other logos in any publicity, advertising, or news release without the prior written approval of an authorized representative of that party. The parties agree that each party may disclose factual information regarding the existence and purpose of the relationship that is the subject of this Agreement for other purposes without written permission from the other party provided that any such statement shall accurately and appropriately describe the relationship of the parties and shall not in any manner imply endorsement by the other party whose name is being used.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in multiple counterparts by their duly authorized representatives and made effective the day and year first above written.

AVERTEST, LLC DBA AVERHEALTH

Dominique Delagnes

Dominique Delagnes (Dec 13, 2023 16:03 EST)

Name

C.O.O.

Title

JOHNSON COUNTY, KANSAS

Robin Lynes (Dec 20, 2023 08:23 CST)

Robin Lynes, Purchasing Manager

APPROVED AS TO FORM:

Ryan Haga

Ryan Haga (Dec 14, 2023 10:04 CST)

Ryan Haga
Assistant County Counselor

EXHIBIT A – FORM 6 COST PROPOSAL

Effective January 1, 2024

Service	Price per Unit of Service
Standard Panel comprised of the following assays: *cocaine, amphetamines, opiates, oxycodone, methadone, benzodiazepines, THC, PCP, fentanyl, creatinine and urine pH.*	$19.00 / test
Standard Drug Add-on List: *Amphetamines (amphetamines, ecstasy, methamphetamines), barbiturates, benzodiazepines, cannabinoids (THC), cocaine, , methadone, methamphetamine, methaqualone, opiates (morphine, heroin, hydrocodone, hydromorphone, oxycodone, oxymorphone), PCP, and propoxyphene*	$ 0.50 / test
Specialty Drug Add-on List: *Buprenorphine, Carisoprodol, Cotinine, ETG, Fentanyl, Heroin, Ketamine, Kratom, LSD, Meperidine, Tramadol, or Zolpidem*	$2.50 / test
Gabapentin Add-on	$5.00 / test
Synthetic Cannabinoids Urine Analysis	$25.00 / test
Synthetic Stimulants Urine Analysis (Bath Salts)	$35.00 / test
Xylazine	$35.00 / test
Standard Oral Fluid Panel (Benz, Coc, Meth, Opiates, & THC)	$19.50 / panel
Oral Fluid Add-ons (alcohol, buprenorphine, fentanyl, methadone, oxycodone, and tramadol)	$2.50 / panel
Hair Test (amphetamines, benzodiazepine, cannabinoids, cocaine, and opiates)	$85.00 / panel
Confirmation Testing	$15.00 / per assay over 5%
In-Person Expert Witness Testimony	$1,000 / day
Litigation Packet	$150 / packet
Case Management System	Included, No Charge
Random Selection	Included, No Charge
Client Notification System	Included, No Charge
Video Testimony	Included, No Charge
Training & Consultation Sessions	Included, No Charge
Participation in Court Staffing Sessions	Included, No Charge
Additional Invoice Customization	$15.00 per invoice