

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

REVISED

Meeting Date: December 17, 2013 **Consent** **Regular**
 Workshop **Public Hearing**

Department

Submitted By: HUMAN RESOURCES

Submitted For: HUMAN RESOURCES

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Contract with NMS Management Services, Inc., to provide drug and alcohol testing services for Palm Beach County's employee drug and alcohol testing program, at an annual cost of \$ 41,450.

Summary: NMS Management Services, Inc., will screen Palm Beach County applicants and employees in safety-sensitive positions for drugs and alcohol, as required under the Omnibus Transportation Employee Testing Act of 1991. Services shall commence retroactively on May 1, 2013, for a term of three years, with two one-year options to renew, at an annual cost of \$41,450.

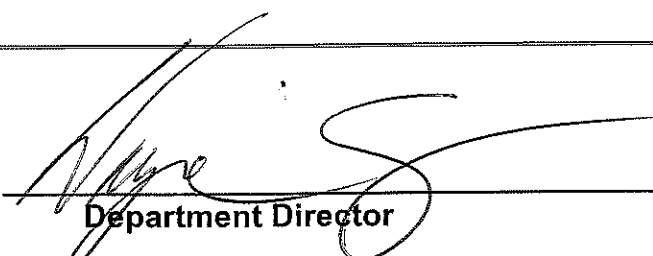
Countywide (DO)

Background and Policy Issues: The previous contract expired on April 30, 2013. During renewal discovered language and other updates were needed therefore deciding to do a new contract with same terms and conditions.


CW-P-060, "Controlled Substances Use and Testing Policy," requires all safety-sensitive employees to be subject to analytical urine drug testing and breath alcohol testing before employment, for reasonable suspicion, following an accident, on a random unannounced basis and as follow-up. Safety-sensitive positions are defined as those requiring operation or maintenance of vehicles in excess of 26,000 pounds, designed to carry 16 or more passengers including the driver, or which are used to transport hazardous materials. The collection site will coordinate with a designated laboratory for testing and transportation of specimens collected. The Medical Review Officer will receive and interpret the laboratory reports, advise the County as to positive/negative findings, and provide an automated true random selection program. Services provided shall include specimen collection, a D.O.T. 5-panel drug screen, split specimen confirmation testing, review by a Medical Review Officer, evidential breath alcohol testing by a certified breath alcohol technician, and after-hours, weekend and holiday availability. Approximately 460 safety-sensitive employees and 200 pre-employments per year are to be tested.

Attachments:

1. Contract with NMS Management Services, Inc.
2. CW-P-060, "Controlled Substances Use and Testing Policy"

Recommended by:  12/16/13
Date

Department Director

Approved by:  12-16-13
Date

Assistant County Administrator

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures					
Operating Costs	<u>\$17,270</u>	<u>\$24,180</u>			
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	<u>\$17,270</u>	<u>\$24,180</u>			
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes X No

Budget Account No.: Fund 0001 Department 340 Unit 3100 Object 3103

Reporting Category

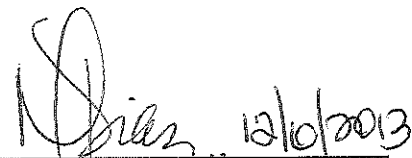
B. Recommended Sources of Funds/Summary of Fiscal Impact:

Funds are budgeted in the Human Resources Department Budget.

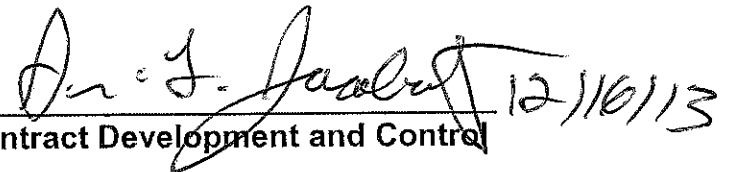
C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

C. OFMB Fiscal and/or Contract Development and Control Comments:

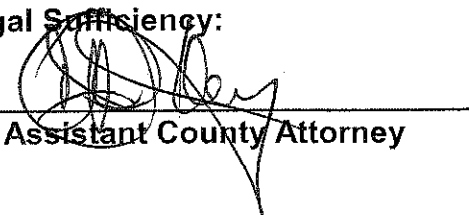


 OFMB
 12/10/2013



 Contract Development and Control
 12/10/13

B. Legal Sufficiency:



 Assistant County Attorney

C. Other Department Review:

Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES

This Contract is made as of the _____ of _____, 20____, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and **NMS Management Services, Inc.**, 2901 South Congress Avenue, Palm Springs, FL 33461, [] an individual, [] a partnership, [x] a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONSULTANT, whose Federal I.D. or Social Security number is **65-0164078**.

In consideration of the mutual promises contained herein, the COUNTY and the CONSULTANT agree as follows:

ARTICLE 1 - SERVICES

The CONSULTANT'S responsibility under this Contract is to provide professional/consultation services in the area of drug and alcohol testing of County employees as more specifically set forth in the Scope of Work detailed in Exhibit "A" to this Contract.

The COUNTY'S representative/liaison during the performance of this Contract shall be Wayne Condry, Director of PBC Human Resources Department, 100 Australian Avenue, Suite 300, West Palm Beach, FL 33406, telephone number (561) 616-6861.

The CONSULTANT'S representative/liaison during the performance of this Contract shall be Elaine Taulé, NMS Management Services, Inc., 2901 South Congress Avenue, Palm Springs, FL 33461, telephone number (561) 967-8884.

ARTICLE 2 - SCHEDULE

The CONSULTANT shall commence services on May 1, 2013, for a term of three (3) years with two one-year options to renew by the COUNTY upon sixty (60) days prior written notice to the CONSULTANT and upon the same terms and conditions.

Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Exhibit "A".

ARTICLE 3 - PAYMENTS TO CONSULTANT

- A. The total amount to be paid by the COUNTY under this Contract for all services and materials including, if applicable, "out of pocket" expenses (specified in paragraph C below) shall not exceed Forty-one Thousand, Four Hundred and Fifty Dollars (\$41,450.00) annually, and a total contract amount of One Hundred and Twenty-four Thousand, Three Hundred and Fifty Dollars (\$124,350.00). The CONSULTANT shall notify the COUNTY's representative in writing when 90% of the "not to exceed amount" has been reached. The CONSULTANT will bill the COUNTY on a monthly basis, or as otherwise provided, at the amounts set forth in Exhibit "B" for services rendered toward the completion of the Scope of Work. Where incremental billing for

partially completed items is permitted, the total billings shall not exceed the estimated percentage of completion as of the billing date.

- B. Invoices received from the CONSULTANT pursuant to this Contract will be reviewed and approved by the COUNTY's representative, to verify that services have been rendered in conformity with the Contract. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's approval.
- C. "Out-of-pocket" expenses will be reimbursed up to an amount not to exceed N/A Dollars (\$ _____), and in accordance with the list of the types and amounts of expenditures eligible for reimbursement as set forth in Exhibit "B." All requests for payment of "out-of-pocket" expenses eligible for reimbursement under the terms of this Contract shall include copies of paid receipts, invoices, or other documentation acceptable to the Palm Beach County Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Contract. Any travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Contract will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.
- D. Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT will clearly state "final invoice" on the CONSULTANT'S final/last billing to the COUNTY. This shall constitute CONSULTANT'S certification that all services have been properly performed and all charges and costs have been invoiced to Palm Beach County. Any other charges not properly included on this final invoice are waived by the CONSULTANT.

ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature on this Contract by the CONSULTANT shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONSULTANT'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this Article 4 within three (3) years following final payment.

ARTICLE 5 - TERMINATION

This Contract may be terminated by the CONSULTANT upon sixty (60) days' prior written notice to the COUNTY's representative in the event of substantial failure by the COUNTY to

perform in accordance with the terms of this Contract through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Contract, the CONSULTANT shall be paid for services rendered to the COUNTY'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the COUNTY the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 6 - PERSONNEL

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONSULTANT'S key personnel as may be listed in Exhibit "A" must be made known to the COUNTY'S representative and written approval must be granted by the COUNTY's representative before said change or substitution can become effective.

The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the CONSULTANT'S personnel (and all Subcontractors) while on County premises will comply with all COUNTY requirements governing conduct, safety and security.

ARTICLE 7 - SUBCONTRACTING

The COUNTY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONSULTANT is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If the CONSULTANT uses any subcontractors on this project the following provisions of this Article shall apply:

If a subcontractor fails to perform or make progress as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

The Palm Beach County Board of County Commissioners has established a minimum goal for SBE participation of 15% on all County solicitations.

The CONSULTANT agrees to abide by all provisions of the Palm Beach County Code establishing the SBE Program, as amended, and understands that failure to comply with any of the requirements will be considered a breach of contract.

The CONSULTANT understands that each SBE firm utilized on this Contract must be certified by Palm Beach County in order to be counted toward the SBE participation goal.

The CONSULTANT shall provide the COUNTY with a copy of the CONSULTANT's contract with any SBE subcontractor or any other related documentation upon request.

The CONSULTANT understands the requirements to comply with the tasks and proportionate dollar amounts throughout the term of this Contract as it relates to the use of SBE firms.

The CONSULTANT will only be permitted to replace a certified SBE subcontractor who is unwilling or unable to perform. Such substitutions must be done with another certified SBE in order to maintain the SBE percentages established in this Contract. Requests for substitutions of SBE's must be submitted to the COUNTY's representative and to the Office of Small Business Assistance.

The CONSULTANT shall be required to submit to the COUNTY Schedule 1 (Participation of SBE-M/WBE Contractors) and Schedule 2 (Letter of Intent) to further indicate the specific participation anticipated, where applicable.

The CONSULTANT agrees to maintain all relevant records and information necessary to document compliance with the Palm Beach County Code and will allow the COUNTY to inspect such records.

ARTICLE 8 - FEDERAL AND STATE TAX

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONSULTANT authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

ARTICLE 9 - AVAILABILITY OF FUNDS

The COUNTY'S performance and obligation to pay under this contract for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

ARTICLE 10 - INSURANCE

- A. CONSULTANT shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverage and limits (including endorsements), as described herein. CONSULTANT shall agree to provide the COUNTY with at least ten (10) days' prior notice of any cancellation, non-renewal or material change to the insurance coverage. The requirements contained herein, as well as COUNTY'S review or acceptance of insurance maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under the contract.
- B. **Commercial General Liability.** CONSULTANT shall maintain Commercial General Liability at a limit of liability not less than **\$500,000** Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. CONSULTANT shall provide this coverage on a primary basis.
- C. **DELETED.**
- D. **Worker's Compensation Insurance and Employers Liability.** CONSULTANT shall maintain Worker's Compensation and Employers Liability in accordance with Florida Statute Chapter 440. CONSULTANT shall provide this coverage on a primary basis.
- E. **Professional Liability.** CONSULTANT shall maintain Professional Liability or equivalent Errors and Omissions Liability at a limit of liability not less than **\$1,000,000** Each Claim. When a self-insured retention (SIR) or deductible exceeds **\$10,000**, COUNTY reserves the right, but not the obligation, to review and request a copy of CONSULTANT'S most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, CONSULTANT shall maintain a Retroactive Date prior to or equal to the effective date of this Contract. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims - made" form. If coverage is provided on a "claims - made" form, the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Contract, CONSULTANT shall purchase a SERP with a minimum reporting period not less than three (3) years. CONSULTANT shall provide this coverage on a primary basis.

- F. **Additional Insured.** CONSULTANT shall endorse the COUNTY as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read: "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." CONSULTANT shall provide the Additional Insured endorsements coverage on a primary basis.
- G. **Waiver of Subrogation.** CONSULTANT hereby waives any and all rights of Subrogation against the County, its officers, employees and agents for each required policy. When required by the insurer, or if the policy does not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement to the policy, then CONSULTANT shall agree to notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy that specifically prohibits such an endorsement, or that voids coverage if the CONSULTANT enters into such an agreement on a pre-loss basis.
- H. **Certificate(s) of Insurance.** Prior to execution of this Contract, CONSULTANT shall deliver to the COUNTY'S representative as identified in Article 26, a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation or non-renewal of coverage. The certificate of insurance shall be issued to:
- Palm Beach County
c/o Wayne Condry, Director
PBC Human Resources Department
100 Australian Avenue, Suite 300
West Palm Beach, Florida 33406
- I. **Umbrella or Excess Liability.** If necessary, CONSULTANT may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- J. **Right to Review.** COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverage, or endorsements, herein from time to time throughout the term of this Contract. COUNTY

reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

ARTICLE 11 - INDEMNIFICATION

CONSULTANT shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Contract or due to the acts or omissions of CONSULTANT.

ARTICLE 12 - SUCCESSORS AND ASSIGNS

The COUNTY and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONSULTANT shall assign, sublet, convey or transfer its interest in this Contract without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the CONSULTANT.

ARTICLE 13 - REMEDIES

This Contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Contract will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. No provision of this Contract is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Contract, including but not limited to any citizen or employees of the COUNTY and/or AGENCY.

ARTICLE 14 - CONFLICT OF INTEREST

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes and the Palm Beach County Code of Ethics. The CONSULTANT further represents that no person having any such conflict of interest shall be employed for said performance of services.

The CONSULTANT shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the

prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONSULTANT. The COUNTY agrees to notify the CONSULTANT of its opinion by certified mail within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the COUNTY shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONSULTANT under the terms of this Contract.

ARTICLE 15 - EXCUSABLE DELAYS

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

Upon the CONSULTANT'S request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the CONSULTANT'S failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the COUNTY'S rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 16 - ARREARS

The CONSULTANT shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 17 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONSULTANT shall deliver to the COUNTY's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful court order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the

COUNTY'S expense shall be and remain the COUNTY'S property and may be reproduced and reused at the discretion of the COUNTY.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

Notwithstanding any other provision in this Contract, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General, Palm Beach County Code 2-421 through 2-440, as may be amended.

ARTICLE 18 - INDEPENDENT CONTRACTOR RELATIONSHIP

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The CONSULTANT does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

ARTICLE 19 - CONTINGENT FEES

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

ARTICLE 20 - ACCESS AND AUDITS

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONSULTANT'S place of business.

The COUNTY has established the Office of the Inspector General in Palm Beach County Code 2-421 through 2-440, as may be amended, which is authorized and empowered to review past,

present and proposed COUNTY contracts, transactions, accounts and records. The Inspector General has the power to subpoena witnesses, administer oaths and require the production of records, and audit, investigate, monitor, and inspect the activities of the CONSULTANT, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General, or interfering with or impeding any investigation shall be in violation of Palm Beach County Code 2-421 through 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

ARTICLE 21 - NONDISCRIMINATION

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression.

ARTICLE 22 - AUTHORITY TO PRACTICE

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

ARTICLE 23 - SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 24- PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 25 - MODIFICATIONS OF WORK

The COUNTY reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT of the COUNTY'S notification of a contemplated change, the CONSULTANT shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify

the COUNTY of any estimated change in the completion date, and (3) advise the COUNTY if the contemplated change shall affect the CONSULTANT'S ability to meet the completion dates or schedules of this Contract.

If the COUNTY so instructs in writing, the CONSULTANT shall suspend work on that portion of the Scope of Services affected by a contemplated change, pending the COUNTY'S decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall initiate a Contract Amendment and the CONSULTANT shall not commence work on any such change until such written amendment is signed by the CONSULTANT and approved and executed on behalf of Palm Beach County.

ARTICLE 26 - NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Wayne Condry, Director
PBC Human Resources Department
100 Australian Avenue, Suite 300
West Palm Beach, Florida 33406

With copy to:

Palm Beach County Attorney's Office
301 North Olive Ave., Suite 601
West Palm Beach, Florida 33401

If sent to the CONSULTANT, notices shall be addressed to:

Elaine Taulé
NMS Management Services, Inc.
2901 South Congress Avenue
Palm Springs, Florida 33461

ARTICLE 27 - ENTIRETY OF CONTRACTUAL AGREEMENT

The COUNTY and the CONSULTANT agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 25 - Modifications of Work.

ARTICLE 28 - CRIMINAL HISTORY RECORDS CHECK

If CONSULTANT'S employees or subcontractors are required under this contract to enter a "critical facility," as identified in Resolution R-2003-1274, the CONSULTANT shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The CONSULTANT acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CONSULTANT shall be solely responsible for the financial, schedule, and staffing implications associated in complying with the Palm Beach County Code.

ARTICLE 29 - REGULATIONS; LICENSING REQUIREMENTS

The CONSULTANT shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CONSULTANT is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Contract on behalf of the COUNTY and CONSULTANT has hereunto set its hand the day and year above written.

ATTEST:

**SHARON R. BOCK
CLERK & COMPTROLLER**

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:**

By: _____
Deputy Clerk

By: _____
Priscilla A. Taylor, Mayor

WITNESSES:

CONSULTANT:


Signature

NMS MANAGEMENT SERVICES, INC.

Stephanie Gomez
Name (type or print)

By: Elaine Taulé
Elaine Taulé

Sheila Linda Woodbury President
Signature Title

Sheila Linda Woodbury
Name (type or print)

(corp. seal)

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: 
County Attorney

**APPROVED AS TO TERMS
AND CONDITIONS**

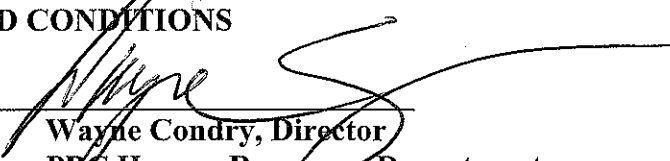
By: 
Wayne Condry, Director
PBC Human Resources Department

EXHIBIT "A"

SCOPE OF SERVICES

Background:

Since January 1, 1995, Palm Beach County is required under the Omnibus Transportation Employee Testing Act of 1991 to screen employees and applicants in safety sensitive positions for drugs and alcohol. Testing is done for pre-employment, randomly, post-accident, for follow up and for reasonable suspicion. Safety sensitive positions are those requiring operation or maintenance of vehicles in excess of 26,000 pounds, designed to carry 16 or more passengers including the driver, or that are used to transport hazardous material.

Collection Site Services:

A collection site is a place designated by the County where employees and applicants present themselves for the purpose of providing a specimen to be analyzed for the presence of drugs and where breath alcohol testing is done. The primary collection site is NMS Management Services, Inc., 2901 South Congress Avenue, Palm Springs, FL 33461. Other sites may be agreed to by the parties during the course of this agreement. Collection site services shall include: collection of a split urine sample, analytical urine drug testing by a Department of Health and Human Services certified laboratory for a five panel drug screen, confirmation testing, and submission of results within an average of five days after receipt of a specimen by the laboratory to a Medical Review Officer; evidential breath testing by a certified Breath Alcohol Technician with no additional charge for confirmation. Approximately, 460 employees and 200 pre-employment applicants per year are to be tested.

Testing:

All safety-sensitive employees shall be subject to analytical urine drug testing and breath testing for alcohol prior to employment, for reasonable suspicion, following an accident, prior to returning to duty after failing a drug test, as follow up during completion of rehabilitation treatment, and on a random, unannounced basis.

Testing will be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Services and certified under the "Mandatory Guidelines for Federal Workplace Drug Testing Programs." Testing shall be conducted in such a way as to protect individual dignity, privacy and confidentiality throughout the testing process. Test results will be reported to the Medical Review Officer by the laboratory within an average of five working days of receipt of the samples.

The drugs that will be tested for include marijuana, cocaine, opiates, amphetamines, and phencyclidine. An initial drug screen will be conducted on each specimen. For those specimens testing positive, a confirmatory Gas Chromatography/Mass Spectrometry test will be performed.

Tests for alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration approved evidential breath testing device operated by a trained breath alcohol technician. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test

will be performed to confirm the results of the initial test.

Medical Review Officer Services:

A Medical Review Officer is a licensed Florida physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test.

The Medical Review Officer (MRO) shall maintain required data and prepare necessary reports in compliance with 49 CFR 382 and any amendments to those regulations or subsequent regulations regarding Federal drug and alcohol testing record keeping.

The MRO will coordinate with a designated laboratory for testing and transportation of specimens collected. Testing will be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Services and certified under the "Mandatory Guidelines for Federal Workplace Drug Testing Programs." Testing shall be conducted in such a way as to protect individual dignity, privacy and confidentiality throughout the testing process. Test results will be reported to the Medical Review Officer by the laboratory within an average of five working days of receipt of the samples.

The MRO shall provide to the County verbal results of all screening within 36 hours of receipt of the test results from the laboratory. Written results shall be provided within 72 hours.

Random Selection Program:

The Consultant shall provide an automated true random selection program in compliance with federal, state and local regulations. Each safety-sensitive employee shall have an equal chance of being selected during each selection period. The rate of random selection shall be at 50% of the total number of safety sensitive employees for drug testing and 25% of safety sensitive employees for alcohol testing. The dates for administering random testing shall be monthly as determined by the Consultant.

An automated report will be sent via facsimile, modem or telephone. The County will designate a representative and an alternate responsible for all communication. The representative will be responsible for notifying the individuals to be tested. Two separate lists will be generated monthly from an employee master list. The first list will designate employees to be drug tested, and the second list will designate employees to be both drug and alcohol tested. Additions and deletions to the employee master list will be provided to the Consultant by the County by the last day of each month.

All procedures will be conducted consistent with the procedures set forth in 49 CFR Part 40 and 49 CFR Part 382 as provided and amended.

EXHIBIT "B"

**SCHEDULE FOR PAYMENT AND PROPOSED BUDGET
FOR "SCOPE OF SERVICES" SET FORTH IN EXHIBIT "A"**

<u>Name of Company</u>	<u>Billing Rate</u>	<u>Estimated Numbers</u>	<u>Extended</u>
<u>Amount</u>			
NMS MANAGEMENT SERVICES, INC.			
5-Panel Drug Collection	\$35.00	460	\$16,100
Saliva Alcohol Screen	\$25.00	150	\$ 3,750
Breath Alcohol Confirmation	\$25.00	75	\$ 1,875
Pre-Employment	\$35.00	200	\$ 7,000
On-Site Services			
Random Drug Testing	\$40.00	90	\$ 3,600
On-Site Service Fee	\$50.00	12	\$ 600
After Hours Testing	\$145.00	10	\$ 1,450
Random Selection Service			
One-time set up fee			\$ 250
Expert Witness Support Services			
Documentation Package	\$125.00	5	\$ 625
Consultation/Testimony			
(at PBC site)	\$1,000.00/day	5	\$ 5,000
Consultation/Testimony			
(at Lab site)	\$125.00/hour	5	\$ 625
Retesting of reported			
Result	\$90.00	5	\$ 450
Shipment of second			
Specimen to another lab	\$25.00	5	\$ 125

TOTAL COST MAXIMUM AMOUNT \$41,450



NMSMA-1

OP ID: DF

CERTIFICATE OF LIABILITY INSURANCEDATE (MM/DD/YYYY)
12/03/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The Plastridge Agency-DBO 820 N.E. 6th Avenue Delray Beach, FL 33483 Michael Botcher	Phone: 561-276-5221 Fax: 561-276-5244	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: FAX (A/C, No):
	INSURER(S) AFFORDING COVERAGE	
INSURED NMS Management Services, Inc. 2901 S Congress Ave Palm Springs, FL 33461	INSURER A: Essex Insurance Co.	
	INSURER B: Employers Preferred Ins. Co.	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSUR LTR	TYPE OF INSURANCE	ADDITIONAL INSURER	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	X	3DQ1049	09/03/2013	09/03/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 1,000 PERSONAL & ADV INJURY \$ Excluded GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ Excluded
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB EXCESS LIAB OCCUR CLAIMS-MADE DED RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	WCV701742815	08/23/2013	08/23/2014	WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Palm Beach County, Board of County Commissioners and its officer's, director's and employees are listed as Additional Insured with respect to General Liability.

CERTIFICATE HOLDER**CANCELLATION**

PALMB-5

Palm Beach County, Board of
 County Commissioners,
 Airport Center Bldg. #1
 100 Australian Ave., #300
 West Palm Beach, FL 33406

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Theodore F. Shults, MS, JD
Chairman
(919) 489-5407

American Association of Medical Review Officers

December 30, 2011

Verification of Certification for: Ernesto Matamorous, MD
NMS Management Services, Inc.
2901 S. Congress Avenue
Palm Springs, FL 33461

Certification Number: 961208106

Current Certification Date: November 23, 2011

Certification Expiration Date: November 23, 2016

This notice serves as verification that the above-referenced physician has been certified as a Medical Review Officer (MRO) through the American Association of Medical Review Officers (AAMRO).

For all physicians certified or recertified by AAMRO after October 1, 2010 will have to attend an MRO training program and take the exam. In accordance with DOT, recertification is required every five years to remain in good standing.

The referenced physician is listed in the AAMRO registry of Certified Medical Review Officers (www.aamro.com).

Theodore F. Shults, J.D., M.S.
Chairman



CERTIFICATE OF LIABILITY INSURANCE

WAP
R001DATE (MM/DD/YYYY)
12/3/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER BB&T INS SVCS INC/CARROLLTON/PHS 267416 P:(866) 467-8730 F:(877) 538-8295 PO BOX 29611 CHARLOTTE NC 28229	CONTACT NAME: PHONE (AC, No, Ext): (866) 467-8730 FAX (AC, No): (877) 538-8295 E-MAIL ADDRESS:														
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC#</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Sentinel Ins Co LTD</td> <td></td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC#	INSURER A: Sentinel Ins Co LTD		INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:
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INSURER B:															
INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															
INSURED NMS MANAGEMENT SERVICES, INC 2901 S CONGRESS AVE LAKE WORTH FL 33461															

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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ENSK LTK	TYPE OF INSURANCE	ADDITIONAL INSURERS	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS								
A	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> General Liab		20 SBM AG5204	03/08/2013	03/08/2014	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMPROP AGG \$2,000,000								
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	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED: RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$ \$								
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WC STATU- TORY LIMITS	OTH- ERS													
E.L. EACH ACCIDENT \$														
E.L. DISEASE - EA EMPLOYEE \$														
E.L. DISEASE - POLICY LIMIT \$														

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (MAX Line Length is 75; Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Those usual to the Insured's Operations.

CERTIFICATE HOLDER PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS AIRPORT CENTER BUILDING #1 100 AUSTRALIAN AVE STE 300 WEST PALM BEACH, FL 33406	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	--

BB&T INS SVCS INC/CARROLLTON/PBS
PO BOX 29611
CHARLOTTE NC 28229

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AIRPORT CENTER BUILDING #1
100 AUSTRALIAN AVE STE 300
WEST PALM BEACH FL 33406

ACORD™

Client#: 1073344

63NMSMAN

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 12/03/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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PRODUCER: BB&T Insurance Services, Inc. 110 Dixie Street, Carrollton, GA 30117, 770 214-1991. CONTACT NAME: [Blank], PHONE: 770 214-1991, FAX: 888-751-2997. INSURER(S) AFFORDING COVERAGE: INSURER A: Markel Ins (Stringer Ware) NAIC #: 38970. INSURED: NMS Management Services Inc, 2901 South Congress Avenue, Lake Worth, FL 33461.

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL SUBR INSR, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Includes sections for General Liability, Automobile Liability, Umbrella Liab, and Workers Compensation.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required) Professional Liability-Testing Services; Claims Made; Retro Date: 09/28/06; Deductible: \$2,500 Each Claim; DNA Testing; Background Check & MVR Endorsement

CERTIFICATE HOLDER: Palm Beach County Board of County Commissioners, Airport Center Bld#1, 100 Australian Ave Ste 300, West Palm Beach, FL 33406. CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: Paula D. Dwyer

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State of Florida
*Minority, Women &
Service-Disabled Veteran*
Business Certification

NMS Management Services

Is certified under the provisions of
287 and 295.187, Florida Statutes for a period from:

08/12/2013 to 08/12/2015

John P Miles, Secretary

*Florida Department of Management Services
Office of Supplier Diversity*

TO: ALL COUNTY PERSONNEL
FROM: ROBERT WEISMAN
COUNTY ADMINISTRATOR
PREPARED BY: HUMAN RESOURCES
SUBJECT: CONTROLLED SUBSTANCES
USE AND TESTING POLICY
PPM #: CW-P-060

ISSUE DATE
November 10, 2003

EFFECTIVE DATE
November 10, 2003

PURPOSE:

To establish a policy on prohibiting drug and alcohol use in the workplace, and procedures for drug and alcohol testing of employees.

AUTHORITY:

1. Omnibus Transportation Employee Testing Act of 1991
2. Palm Beach County Merit Rules and Regulations

POLICY:

This policy applies to all County employees, including volunteers, while on duty. Employees covered by the CWA bargaining unit should refer to their Contract for further information on drug testing. All employees will be subject to urine drug testing and alcohol breath testing for reasonable suspicion. In addition, certain employees who perform safety sensitive functions are subject to additional requirements to be tested for drugs, before beginning employment and for drugs and alcohol following an accident and randomly.

It is the policy of Palm Beach County to:

- (1) Assure that employees are not impaired in their ability to perform assigned duties in a safe and productive manner.
- (2) Create a workplace environment free from the adverse effects of drug and alcohol use or misuse.
- (3) Prohibit the use, possession, solicitation, sale or disbursement of controlled substances while on duty.

- (4) Encourage employees to seek professional assistance any time personal problems, including alcohol or drug dependency, adversely affect their ability to work.

PROCEDURES:

Definitions

Controlled substances:

- (1) Any illegal drug, including but not limited to marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine; and
- (2) Beverages containing alcohol or any substances including medication or food that would cause alcohol to be present in the body while performing County business.

On-duty: Time during which an employee actually works including lunch periods and breaks when an employee is scheduled to return to work, and periods during which the employee is available to work, such as when on-call. For employees performing safety sensitive functions, alcohol prohibitions also extend to the 4 hours before performing a safety sensitive function, and the 8 hours following an accident that requires testing.

Safety sensitive functions: Those duties requiring operation of a revenue service vehicle or operation and maintenance of vehicles or equipment in excess of 26,000 pounds GVWR, designed to carry 16 or more passengers (including the driver), or of any size which is used in the transportation of a placardable amount of hazardous material. A list of safety sensitive positions is updated monthly. A driver is considered to be performing a safety sensitive function during any period in which he is actually performing, ready to perform or available to perform safety sensitive functions, and including any other functions as provided by law.

Prohibited Conduct

1. The use, possession, solicitation, sale or disbursement of controlled substances and alcohol on County premises, in County vehicles, or while on County business.
2. Reporting for duty or remaining on duty under the influence or impaired by use of drugs or alcohol.
3. Refusing to comply with a request for testing, providing false information related to a test, attempting to falsify test results through tampering, contamination, adulteration or substitution. Refusal includes receiving a verified adulterated or substituted test result, being unable to provide a specimen or breath sample without a valid medical explanation, refusing to take any medical tests ordered by the Medical Review Officer (MRO), refusing to be observed if required, a verbal declaration, obstructive behavior, or physical absence, such as leaving the test site or the scene of an accident, resulting in the inability to conduct the test, not having identification or other means of identifying oneself at site, failing to appear within a reasonable time, refusing to sign testing forms, and other failures to cooperate as

provided by law.

4. **For Safety Sensitive Positions:**

Performing safety sensitive functions with a blood alcohol concentration of 0.04 or greater.

Using alcohol during the four hours before performing a safety sensitive function.

Using alcohol during the eight hours following an accident, or before taking a required post-accident test.

Employees who violate these prohibitions will be subject to disciplinary action up to and including termination. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.

Testing Requirements

Testing shall be conducted in a way that assures a high degree of confidentiality, accuracy and reliability and using techniques, equipment and laboratory facilities approved by the U.S. Department of Health and Human Services. All testing will be conducted according to the requirements of 49 CFR Part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs." The costs of testing will be paid by the County, except as noted.

Drug testing will be for marijuana, cocaine, opiates, amphetamines, and phencyclidine. An initial immunoassay screen to eliminate negative urine specimens from further consideration will be conducted on each specimen. The split sample method of collection is used in which the sample is divided into two containers, the primary specimen and the split specimen. If the test result of the primary specimen is positive, a confirmation test will be done. This is a second analytical procedure using a different technique from the first, Gas Chromatography/Mass Spectrometry.

Alcohol testing will be conducted using an evidential breath testing device. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results. An alcohol concentration of 0.04 or greater will be considered a positive alcohol test. If an employee who performs safety sensitive functions has a confirmed alcohol concentration of greater than 0.02 but less than 0.04, they will not be in violation of the prohibitions of the Omnibus Testing Act, but they will not be allowed to perform safety sensitive functions until 24 hours following the test. In such cases, employees will be sent home and required to use sick or vacation leave or be on leave without pay.

Pre-employment Testing

Applicants who are considered final candidates for a safety sensitive position will be tested for the presence of illegal drugs as a part of the application process. Any applicant who refuses to be tested, fails to appear for testing, tampers with the test, fails to cooperate in testing, or fails the test will be ineligible for hire for one year. Before reapplying for a safety sensitive position, the applicant must show proof of participation with a substance abuse program and a negative drug test.

In the case of promotion to a safety sensitive position, prior to the first time an employee performs a safety-sensitive function they shall undergo urine drug and breath alcohol testing. Receipt of negative test results is required for promotion and failure of a test will result in possible disciplinary action and required participation in a rehabilitation program through EAP.

Reasonable Suspicion Testing

Employees will be subject to testing when there are reasons to believe that the employee is under the influence of drugs or alcohol. A reasonable suspicion referral for testing must be based on two trained supervisors' specific, contemporaneous, clearly explained observations concerning the appearance, behavior, speech or body odors of the employee. A written record of the observations leading to a test shall be made and signed by the supervisors who made the observations.

When supervisors have reasonable suspicion, based on past training, that an employee is under the influence of drugs or alcohol, they shall immediately stop the employee's performance of the job functions and inform the employee of the suspicion. They will arrange transportation for the employee to the testing site. The employee will be tested for both drugs and alcohol. After the testing is completed, the employee shall be transported to their place of residence. The employee shall be on administrative leave with pay until the test results are reported. If the results of the testing are positive, the employee may receive disciplinary action and be required to participate in a rehabilitation program through EAP.

Post-Accident Testing

A post-accident drug and alcohol test shall be performed if the accident occurs while the employee was performing safety-sensitive functions and the accident meets certain criteria:

Type of Accident Involved	Citation Issued to the Safety Sensitive Driver	Test Must be Performed by Employer
Human Fatality	Yes	Yes
	No	Yes
Bodily injury with immediate medical treatment away from the scene.	Yes	Yes
	No	No
Disabling damage to any motor vehicle requiring tow away.	Yes	Yes
	No	No

- (1) The accident involved a fatality.
- (2) The employee received a citation under state or local law for a moving traffic violation arising from the accident and the accident results in an injury treated away from the scene, or the accident results in a vehicle being towed from the scene.

If testing is required, it is the responsibility of the supervisor to arrange for testing as soon as possible, i.e., within 2 hours but not to exceed 8 hours for alcohol testing and 32 hours for drug testing. If an alcohol test is not done within 2 hours, the supervisor must document why the test was not done. If the alcohol test is not done within 8 hours, the supervisor shall cease attempts to test and document again why testing was not done. If drug testing is not done within 32 hours, attempts to test must cease and documentation be prepared as to why drug testing was not done.

A safety-sensitive employee involved in an accident requiring testing must refrain from alcohol use for 8 hours following the accident or until taking the test. Any employee who leaves the scene of an accident without justifiable explanation prior to submission to drug and alcohol testing will be considered to have refused the test.

Random Testing for Safety Sensitive Positions

Random alcohol testing shall be conducted at a minimum annual rate of 10% of the average number of safety-sensitive positions.

Random drug testing shall be administered at a minimum annual rate of 50% of the average number of safety-sensitive positions.

Testing will be unannounced and testing dates will be spread reasonably throughout the calendar year. A computer-based random number generator matched to employees' position numbers will be used for selection. This process shall provide that each employee has an equal chance of being tested each time selections are made.

Human Resources will notify departments of selected employees to be tested. Departments are responsible for seeing that employees are immediately relieved of any safety sensitive functions and immediately sent or taken to the test site. If a selected employee is on leave, the testing will be postponed until the employee returns.

Return to Duty Testing/Follow-up Testing

Before an employee can return to duty performing job functions after engaging in any conduct prohibited by this PPM, the employee shall be tested for drugs and alcohol and cannot return to work until testing negative. Employees who have tested positive are subject to additional follow-up testing.

Consequences of a Positive Test Result

Reporting Results: A Medical Review Officer (MRO) is a licensed physician who receives the laboratory results and reports them to the Human Resources Department. Before verifying and reporting a positive result, the MRO shall make a reasonable effort to contact the employee.

The employee can confidentially discuss the test results with the MRO and offer any information that could explain the test result, such as medicines which the employee is taking. Employees will have 72 hours from being contacted to request a test at another certified laboratory of the split sample specimen previously taken. All costs for split sample testing are paid by the employer. However, if the split sample also tests positive, the employee will be required to reimburse the County.

Referral to the Employee Assistance Program: Any employee who tests positive for drugs or alcohol will not be allowed to perform job functions. The employee will be referred to the Employee Assistance Program (EAP) for evaluation to determine what assistance, the employee needs in resolving problems associated with substance abuse. The employee cannot return to safety sensitive duties until testing negative within 30 days of first positive result.

Employees with a first-time verified positive drug or alcohol test result shall be given a one-time opportunity to participate in, at the employee's own expense or pursuant to coverage under a health insurance plan, an employee assistance program or an alcohol and drug rehabilitation program, which shall be monitored by the Employee Assistance Program. Employees will be allowed to take sick and vacation leave to participate in a prescribed program.

The employee shall be discharged if the employee either refuses to participate in the employee assistance program or the alcohol and drug rehabilitation program, having initiated the participation within 30 calendar days of the positive drug test, or fails to successfully complete such program as evidenced by withdrawal from the program before its completion, or a report from the program indicates unsatisfactory compliance, or tests positive on a verified test or random test at a later date; or is under the influence of drugs or alcohol at a later date.

Evaluation by EAP does not shield an employee from disciplinary action under the Merit Rules or guarantee employment or reinstatement. Employees will be subject to appropriate disciplinary action excluding termination provided there have been no additional violations of the merit rules. If an employee is allowed to return to duty, they must agree to a contract that includes a release to work statement from EAP, a negative test for drugs and/or alcohol, an agreement to unannounced frequent follow-up testing, a statement of expected work-related behaviors, and an agreement to follow specified after-care requirements. Any violation of the contract will be grounds for termination.

Records Retention

All records of alcohol and drug testing results, documentation of refusals to submit to testing, reasonable suspicion and post-accident testing shall be maintained by the Human Resources De-

partment. Records relating to treatment plans and training shall be maintained by the Risk Management Department. Records relating to agreements with collection site facilities, policy and procedures, and reports of statistical summaries of test results will be maintained by the Human Resources Department.

ROBERT WEISMAN
COUNTY ADMINISTRATOR

Supersession History:

1. CW-P-060, dated 4/1/95.
2. CW-P-060, dated 3/1/98.