

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF DORAL
AND
NMS MANAGEMENT SERVICES, INC.
FOR
DRUG AND ALCOHOL SCREENING SERVICES**

THIS AGREEMENT is made between **NMS MANAGEMENT SERVICES, INC.** a Florida corporation, (hereinafter the "Provider"), and the **CITY OF DORAL, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the administration of the City requires pre-employment drug examination and and post-accident drug and alcohol for its candidates and employees, and

WHEREAS, the Provider has particular expertise in the subject matter of Drug and alcohol Services and is ready and able to offer the professional services in the manner desired by the City; and

WHEREAS, the Provider and City, through mutual negotiation, have agreed on the terms and conditions in this Agreement for the provision of the Drug and Alcohol Services.

1. **Scope of Services/Deliverables.**

- 1.1 The Provider shall furnish professional services to the City as set forth in the Scope of Services, attached hereto as **Exhibit "A"**, which is incorporated herein and made a part hereof by this reference.
- 1.2 The "Scope of Services" includes a Schedule for the Service which includes a breakdown of tasks, timeline and deliverables to the City.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through September 30, 2022, unless earlier terminated in accordance with Paragraph 8. The City Manager may extend the term of this Agreement by written notice to the Consultant.
- 2.2 Provider agrees that time is of the essence and Provider shall complete each deliverable for the Service within the timeframes set forth in the Schedule, unless extended by the City Manager.

3. **Compensation and Payment.**

- 3.1 The Provider shall be compensated in the following manner:

As compensation for the services contemplated herein and for performance rendered by NMS Management Services, Inc., of its duties and obligations hereunder, the City shall pay to NMS Management Services, Inc., an aggregate fee equal to the pricing indicated on Exhibit A (The "Consulting Fee").

3.2 The City shall pay Consultant in accordance with the Florida Prompt Payment Act.

3.3 If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

4. **Sub-providers.**

4.1 The Provider shall be responsible for all payments to any sub-providers and shall maintain responsibility for all work related to the Service.

4.2 Any sub-providers used on the Service must have the prior written approval of the City Manager or his designee.

5. **City's Responsibilities.**

5.1 Furnish to Provider, at the Provider's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Provider, in possession of the City.

5.2 Arrange for access to and make all provisions for Provider to enter upon real property as required for Provider to perform services as may be requested in writing by the Provider (if applicable).

6. **Provider's Responsibilities.**

6.1 The Provider shall exercise the same degree of care, skill and diligence in the performance of the Service as is ordinarily provided by a youth baseball program management provider under similar circumstances. If at any time

during the term of this Agreement or within one year from the completion of the Service, it is determined that the Provider's deliverables are incorrect, defective or fail to conform to the Scope of Services of the Service, upon written notification from the City Manager, the Provider shall at Provider's sole expense, immediately correct the work. The City in no way assumes or shares any responsibility or liability of the Provider or Sub Provider under this agreement.

7. **Conflict of Interest.**

7.1 To avoid any conflict of interest or any appearance thereof, Provider shall not, for the term of this Agreement, represent any private sector entities (developers, corporations, real estate investors, etc.), with regard to any City related matter.

8. **Termination.**

8.1 The City Manager for any reason may terminate this Agreement upon thirty (30) days written notice to the Provider, or immediately with cause, with cause. Cause for purposes of this Agreement shall be defined as: a material breach of this Agreement which Provider fails to cure within five (5) days of receiving notice from the City of such breach; a failure on the part of Provider to adhere to the City's reasonable requests regarding the objectives of this Agreement; and/or any act or omission of Provider that constitutes a violation of Federal, State, County, or City Law.

8.2 Upon receipt of the City's written notice of termination, Provider shall stop work on the project.

8.3 In the event of termination by the City, the Provider shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Provider has first complied with the provisions of Paragraph 8.4.

8.4 The Provider shall transfer all books, records, reports, working drafts, documents, and data pertaining to the Project to the City, in a hard copy and electronic format specified by the City within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

8.5 If the Provider wishes to terminate this Agreement, it must provide the City with sixty (60) days written notice. Failure to provide the City with such days written notice may result in the Provider being unable to do business with the City in the future.

9. **Insurance.**

9.1 The Provider shall secure and maintain throughout the duration of this Agreement medical and/or commercial insurance of such type and in such amounts as required for Provider to operate its business.

9.2 The City may require proof of the aforementioned insurance prior to the commencement of the Services. The City further reserves the right to solicit additional coverage, or require higher limits of liability as needed, and depending on the nature of scope, or level of exposure.

10. **Nondiscrimination.**

10.1 During the term of this Agreement, Provider shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination

11. **Attorneys' Fees and Waiver of Jury Trial.**

11.1 In the event of any litigation arising out of this Agreement, each party shall be responsible for their attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

11.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

12. **Indemnification.**

12.1 Provider shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Provider's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Provider and third parties made pursuant to this Agreement. Provider shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Provider's performance or non-performance of this Agreement. This

section shall be interpreted and construed in a manner to comply with any applicable Florida Statutes, including without limitation Sections 725.06 and 725.08, Fla. Stat., if applicable.

12.2 The provisions of this section shall survive termination of this Agreement.

12.3 Ten dollars (\$10) of the payments made by the City constitute separate, distinct, and independent consideration for the granting of this indemnification, the receipt and sufficiency of which is voluntary and knowingly acknowledged by the Provider.

13. **Notices/Authorized Representatives.**

13.1 Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the City: Hernan Organvidez
Interim City Manager
City of Doral, Florida
8401 NW 53rd Terrace
Doral, Florida 33166

With a Copy to: Luis Figueredo, ESQ.
City Attorney
City of Doral, Florida
8401 NW 53rd Terrace
Doral, FL 33166

For The Provider: Alfredo Taule/ Elaine Taule
Registered Agent
MNS Management Services, Inc.
2901 South Congress Avenue
Palm Springs, FL 33461

14. **Governing Law.**

14.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Miami-Dade County, Florida.

15. **Entire Agreement/Modification/Amendment.**

15.1 This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

15.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

16. **Ownership and Access to Records and Audits.**

16.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Provider providing services to the City under this Agreement shall be the property of the City.

16.2 The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Provider involving transactions related to this Agreement.

16.3 The City may cancel this Agreement for refusal by the Provider to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

17. **Nonassignability.**

17.1 This Agreement shall not be assignable by Provider unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Provider, and such firm's familiarity with the City's area, circumstances and desires.

18. **Severability.**

18.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law, provided the severance of any term does not result in interest on any Bonds issued to finance the Fields being includable in gross income for federal tax purposes.

19. **Independent Contractor.**

19.1 The Provider and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19.2 The Provider agrees that it will not take any Federal tax position inconsistent with it being a service provider.

20. **Compliance with Laws.**

20.1 The Provider shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Service.

21. **Waiver**

21.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

22. **Survival of Provisions**

22.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

23. **Prohibition of Contingency Fees.**

23.1 The Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the

Provider, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

24. **Counterparts**

24.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute one and the same instrument.

25. **Removal of Unsatisfactory Personnel**

25.1 The City may make written request to Provider for the prompt removal and replacement of any personnel employed or retained by Provider or any sub provider. The Provider shall respond to the City within fourteen calendar days of receipt of such request with either the removal and replacement of such personnel or with written justification as to why removal is not warranted. All decisions involving personnel will be made by Provider. Such request shall solely relate to said employees work under this agreement. In the event the City Manager disagrees with the justification offered by Provider, the City Manager's decision to replace the employee shall be final.

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature: The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same and by Provider by and through its President, whose representative has been duly authorized to execute same.

Attest:



Connie Diaz, City Clerk

CITY OF DORAL

By: 

Hernan Organvitez, Interim City Manager
Date: 5-26-21

Approved As To Form and Legal Sufficiency for the Use
And Reliance of the City of Doral Only:

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✓


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Handwritten signature or initials, possibly "H. P. 2" or similar, with "2-20-21" written below it.

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Luis Figueredo, ESQ.
City Attorney

PROVIDER

Elaine Taule

Digitally signed by Elaine Taule
DN: cn=Elaine Taule, o=NMS
Management Services, ou,
email=etaule@nms123.com, c=US
Date: 2021.05.21 12:46:25 -04'00'

By: _____
Its: President
Date: 05/21/21

“EXHIBIT A”

NMS Management Services, Inc.

As compensation for the services contemplated herein and for performance rendered by NMS Management Services, Inc. of its duties and obligations, the City shall pay to NMS Management Services, Inc. an aggregate fee listed below:

Pre-Employment Urine \$39.00 per test

Post-Accident Urine \$39.00 per test

Post-Accident Breath \$33.00 per test

Random Urine Collection \$39.00 per test

Post -Accident After Hours \$300.00 per test (2 hours) each additional hour is \$50.00



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

05/13/2021

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.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

Table with 2 main sections: PRODUCER (Comerstone Insurance Services) and INSURED (NMS Management Services Inc). Includes contact info for Steven Brooks and a list of insurers (Admiral Insurance, Normandy Harbor, Blackboard).

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...

Main coverage table with columns for INSR LTR, TYPE OF INSURANCE, POLICY NUMBER, POLICY EFF, POLICY EXP, and LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liability, Workers Compensation and Employers' Liability, and Cyber Liability.

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

Empty space for description of operations, locations, and vehicles.

CERTIFICATE HOLDER / CANCELLATION section. Includes City of Doral address and Steven Brooks as the authorized representative.

RESOLUTION No. 21-114

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, PURSUANT TO SECTION 2-321 OF THE CITY'S CODE OF ORDINANCES, WAIVING THE COMPETITIVE BID PROCESS IN FAVOR OF NMS MANAGEMENT SERVICES, PHYSICIANS HEALTH SERVICES, AND AIRPORT MEDICAL SOLUTION; AUTHORIZING THE CITY MANAGER TO AMEND THE PROFESSIONAL SERVICES AGREEMENT WITH NMS MANAGEMENT SERVICES INC. AND ENTER INTO PROFESSIONAL SERVICES AGREEMENTS WITH PHYSICIANS HEALTH SERVICES AND AIRPORT MEDICAL SOLUTION FOR DRUG AND ALCOHOL SCREENING SERVICES, IN AN AMOUNT NOT TO EXCEED \$30,000.00; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Doral has used the services of NMS Management Services, Inc., for drug and alcohol testing since 2010; and

WHEREAS, on December 9, 2020, the City Manager renewed and executed a Professional Services Agreement with NMS Management Services, Inc., to continue providing drug and alcohol screening for pre-employment and post-accident drug and alcohol for its job candidates and employees; and

WHEREAS, the current contract remains in effect through September 30, 2022, and stipulates that in no event shall the fees exceed \$14,900.00, and

WHEREAS, NMS Management Services, Inc., continues to provide the City with an exceptional outcome thorough its familiarity with our City and willingness to maintain the original, scope of services, quality and reliability since 2010; and

WHEREAS, the Human Resources Department will begin the necessary work to issue an RFP in the coming months, in order to award a competitively bid contract in Fiscal Year 2021/2022, as outlined in the City of Doral Code, Section 2-319, Competitive Bidding Procedure; and

WHEREAS, section 2-321 of the City of Doral Code of Ordinances authorizes the wavier of the City's competitive bidding process, upon the recommendation of the City Manager based on the City's best interest and nature of the good and/or services; and

WHEREAS, based on the proposal rate and continued quality services provided, the staff recommends to the City Manager that the City waive the competitive bid process in favor of NMS Management Services, Inc., Physicians Health Services and Airport Medical Solution, as it is in the City's best interest; and

WHEREAS, to achieve this object, a transfer of \$1,458.00 is needed from the Human Resources Department's Account Fund #001.20005.500540 to the Human Resources Department's Account Fund #001.20005.500340; and

WHEREAS, the City Manager recommends that the Mayor and City Council approve amending the existing Professional Services Agreement with the aforementioned City vendor to provide drug and alcohol services and enter into Professional Services Agreements with Physicians Health Services and Airport Medical Solution in an amount not to exceed \$30,000.00 (including the funds already expended for this fiscal year).

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

Section 2. Waiver. Pursuant to Section 2-321 of the City Code, and upon the recommendation of the City Manager, the competitive bid process is hereby waived in favor of NMS Management Services, Inc., Physicians Health Services and Airport Medical

Solutions. This waiver in and of itself, absent an agreement, does not vest NMS Management Services, Inc., Physicians Health Services and Airport Medical Solution with any contractual rights

Section 3. Approval. The City Manager is hereby authorized to amend the existing agreement on behalf of the City of Doral with NMS Management Services, Inc., and enter into agreements with Physicians Health Services and Airport Medical Solution upon approval from the City Attorney as to form and legal sufficiency, for the provision of drug and alcohol screening services through September 30, 2022, in an amount not to exceed \$30,000.00 for this fiscal year.

Section 4. Authorization. The City Manager is authorized to execute the work orders and expend budgeted funds on behalf of the City.

Section 5. Implementation. The City Manager and the City Attorney are hereby authorized to take such further action as may be necessary to implement the purpose and the provisions of this Resolution.

Section 6. Effective Date. This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Councilmember Mariaca who moved its adoption. The motion was seconded by Councilmember Cabral and upon being put to a vote, the vote was as follows:


| | |
|------------------------------|-----|
| Mayor Juan Carlos Bermudez | Yes |
| Vice Mayor Pete Cabrera | Yes |
| Councilwoman Digna Cabral | Yes |
| Councilwoman Claudia Mariaca | Yes |
| Councilman Oscar Puig-Corve | Yes |

PASSED AND ADOPTED this 12 day of May, 2021.




JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



CONNIE DIAZ, MMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:



LUIS FIGUEREDO, ESQ.
CITY ATTORNEY