

426

Agreement

Clerk's Contract and Agreement Cover Page

Year: 2008-1

Legistar File ID#: 2008-0179

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Amount \$12,000.00

Contract Type:

Professional Services

Contractor's Name:

ChoicePoint

Contractor's AKA:

Execution Date:

4/1/2008

Termination Date:

3/31/2011

Renewal Date:

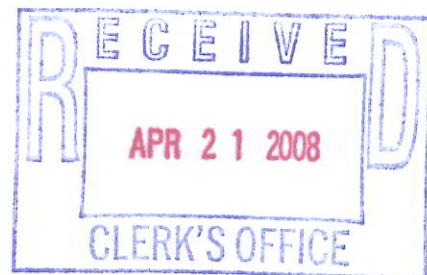
Department:

Administration/Village Manager

Originating Person:

Stephana Przybylski

Contract Description: Third Pary Administrator - Drug and Alcohol Testing



Friday, April 18, 2008

MAYOR
Daniel J. McLaughlin

VILLAGE CLERK
David P. Maher

14700 S. Ravinia Ave.
Orland Park, IL 60462
(708) 403-6100



VILLAGE HALL

TRUSTEES
Bernard A. Murphy
Kathleen M. Fenton
Brad S. O'Halloran
James V. Dodge
Edward G. Schussler III
Patricia Gira

April 18, 2008

Mr. Chilin Tran
ChoicePoint
480 Quadrangle Drive
Bolingbrook, Illinois 60440

RE: ***NOTICE TO PROCEED***
Controlled Substances and Related Services Third Party Administration Agreement

Dear Mr. Tran:

Enclosed is one (1) original executed agreement dated April 1, 2008 for Third Party Administration of The Village's Drug and Alcohol Testing Program. This agreement is for a term of three (3) years with the option to renew for an additional two (2) one-year terms. Pricing is according to Exhibit A of the agreement.

If you have any questions, please call me at 708-403-6173 or Stephana Przybylski at 708-403-6166.

Sincerely,

Denise Domalewski
Contract Administrator

cc: Stephana Przybylski



CONTROLLED SUBSTANCES AND RELATED SERVICES THIRD PARTY ADMINISTRATION AGREEMENT

This Third Party Administration Agreement ("Agreement") is entered into this 1st day of April, 2008 ("Effective Date") by and between National Safety Alliance, Incorporated, with its headquarters located at 1000 Alderman Drive, Alpharetta, Georgia 30005, a subsidiary of ChoicePoint Services Inc., NSA's applicable subsidiaries and affiliated companies, ("ChoicePoint") and The Village of Orland Park, with its headquarters located at 14700 S. Ravinia Ave., Orland Park, IL 60462 ("Customer"). Affiliate shall mean any business entity that controls, is controlled by or is under common control with a party.

1. **Services/Third Party Administrator.** During the term of this Agreement, ChoicePoint shall provide to Customer the administration services set forth in Exhibit A selected by Customer (the "Services") in connection with the Customer's programs identified in Exhibit A (collectively the "Program"). Customer hereby authorizes ChoicePoint to act as the Customer's "Third Party Administrator" for the purpose of administering the Program in accordance with applicable regulations and/or Customer policy. In instances where there are conflicting Federal and State regulations, ChoicePoint will default to the Federal standard unless otherwise instructed in writing by Customer. Customer may also request that ChoicePoint provide any additional services set forth on Exhibit A. ChoicePoint shall only provide the services explicitly identified on the attached Exhibit A.

2. **Performance Required by Customer.** During the term of this Agreement, Customer agrees to do the following:

- (a) Ensure that Customer's Program is in compliance with all applicable federal, state and local laws and regulations or other similar requirements.
- (b) Name one or more Customer employees to coordinate the Program and assist ChoicePoint in administering it and provide ChoicePoint with updated information.
- (c) Customer agrees to pay administrative fees to ChoicePoint pursuant to Exhibit A of this Agreement; provided that ChoicePoint reserves the right to change the administrative fees for the services to be provided under this Agreement during any renewal period upon giving Customer written notice of such change at least sixty (60) days prior to the end of the current term. Customer agrees to pay any increases in fees, and/or surcharges imposed by ChoicePoint's vendors and subcontractors, including but not limited to laboratory and collection site fees, invoiced to ChoicePoint, as they may occur anytime during the term. Customer also agrees, unless specifically noted, to re-negotiate the compensation rates set forth in Exhibit A to this Agreement if the percentage of positive test results exceeds five percent (5%) of the total number of tests taken for any three (3) month period. If a new agreement is not reached within sixty (60) days of ChoicePoint's original notice to Customer, either party may terminate this Agreement upon giving thirty (30) days advance written notice.
- (d) Customer shall be responsible for all charges incurred, including applicable fees, as well as charges resulting from Customer's errors in inputting data, duplicate requests, and errors in transmission. The Customer agrees to pay ChoicePoint pursuant to the provisions of the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*) including, but not limited to, Section 4 therein: "Sec. 4. Any bill approved for payment pursuant to Section 3 shall be paid within 30 days after the date of approval. If payment is not made within such 30 day period, an interest penalty of 1% of any amount approved and unpaid shall be added for each month or fraction thereof after the expiration of such 30 day period, until final payment is made."
- (e) Customer agrees that, unless specifically noted, the fee schedule set forth on Exhibit A only applies to specimens collected and alcohol tests administered at in-network facilities and during the regular hours of operation of collection facilities.

(f) Customer agrees to exclusively utilize the specimen collection sites mutually agreed upon between ChoicePoint and Customer. The fees set forth above include the following components: Collection site identification and coordination, collection kit shipment and coordination, specimen collection, overnight shipment of samples to the testing laboratory, laboratory supplies, laboratory analysis, automatic GC/MS confirmation of positives and MRO review and reporting of test results. However, such fees are contingent upon specimens being collected during the regular hours of operation of collection facilities. Fees for after-hours emergency specimen collection vary depending upon provider.

(g) When applicable, Customer will provide ChoicePoint with a current and accurate list of covered employees for random drug and alcohol testing. Customer is under a duty to keep such lists updated and accurate. Customer agrees to ensure all random tests are performed.

(h) Customer shall pay for all costs incurred for accelerated account setups, including fees for overnight courier services in connection with the provision of supplies.

(i) With respect to personally identifiable information regarding consumers, the Parties further agree as follows: ChoicePoint has adopted the "ChoicePoint Privacy Principles" ("Principles") recognizing the importance of appropriate privacy protections for consumer data and Customer agrees that Customer (including its directors, officers, employees or agents) will comply with the Principles or Customer's own comparable privacy principles, policies, or practices. ChoicePoint's Privacy Principles are available at www.privacyatchoicepoint.com.

(j) If at any time during the term hereof, Customer changes its legal name or its address, as set forth in this Agreement, Customer shall immediately notify ChoicePoint in writing of such change.

3. Term of Agreement.

(a) The term of this Agreement shall commence on the Effective Date and shall continue in effect for a period of three years with the option to renew the Agreement for two (2) additional one year terms unless earlier terminated by the Customer or ChoicePoint pursuant to the provisions of Section 2(c) or by ChoicePoint in the event Customer breaches its obligations set forth in this Agreement, which breach is not cured within thirty (30) day's written notice. In addition, either party, at its sole option, may terminate the Agreement by giving the other party written notice of termination thirty (30) days prior to termination date.

(b) Upon termination of this Agreement, Customer agrees that it will promptly pay ChoicePoint for all services that have been provided to Customer prior to the effective date of termination of this Agreement.

(c) Upon termination of this Agreement, and upon the written request of Customer, ChoicePoint agrees that it will provide the Customer with electronic copies of all then-existing database information, files and materials related to the Services, as allowable by law and in a commercially available standard format. Furthermore, if the Services include Medical Review Officer Services ("MRO"), ChoicePoint will facilitate and assist Customer with the transfer of Customer's substance testing records to a new Medical Review Officer within ten working days as required by applicable federal regulations (the Customer acknowledges that ChoicePoint may keep copies of such information as required under applicable federal and state laws).

(d) ChoicePoint's MRO will retain drug testing records confirmed positive by the laboratory up to the then statutory limit. Such records may include, as required by law, the MRO's copies of the custody and control form, medical interviews, documentation of the basis for verifying as negative test results confirmed as positive by the laboratory, and any other documentation concerning the MRO's verification process.

4. Indemnification.

(a) Customer's Indemnification Obligations:

(i) The Customer agrees to indemnify, defend and hold harmless ChoicePoint, its officers, directors, affiliates, agents and employees, from any loss or damage from any claim, action, or proceeding brought by any third party whether civil, administrative, or investigative in nature, including payment of costs and reasonable attorney's fees, brought against ChoicePoint, its officers, directors, affiliates, agents or employees, of such nature relevant to this Agreement arising out of or resulting from any willful or knowing act or omission on the part of the Customer, its officers, directors, affiliates, agents or employees.

(ii) If the Services include alcohol and controlled substances testing administration, Customer agrees to make all determinations as to which subject individuals should be tested on a "for reasonable cause" and "post-accident" basis and Customer shall indemnify ChoicePoint and its directors, officers, affiliates, employees and agents for claims or proceedings arising out of such determination. Further, it is agreed that the Customer's facsimile machine, email accounts, ChoicePoint website login information, or other such confidential facilities used to transmit and receive test results, shall be maintained by Customer to avoid inadvertent or unauthorized disclosure. Customer agrees to indemnify and hold ChoicePoint harmless from any and all claims arising from the inadvertent disclosure of test results by Customer.

(iii) Notwithstanding sections (1) and (ii) above, Customer's indemnification obligations under this Agreement shall be limited in the aggregate to Two Hundred Fifty Thousand Dollars (\$250,000.00).

(b) ChoicePoint's Indemnification Obligations:

(i) ChoicePoint agrees to indemnify, defend and hold harmless Customer, its officers, directors, affiliates, agents, and employees from any loss, damage or claim whether civil, administrative, or investigative in nature, including reasonable attorney's fees, brought by third parties, of such nature relevant to this Agreement, arising out of or resulting from any violation of law or the negligent acts or omissions on the part of ChoicePoint, its officers, directors, affiliates, agents or employees. Customer shall notify ChoicePoint promptly of any claims or suits and ChoicePoint shall have the right to conduct at its own cost any defense of Customer under this paragraph. Notwithstanding the above, ChoicePoint's indemnification obligations under this Agreement shall be limited in the aggregate to Two Hundred Fifty Thousand Dollars (\$250,000.00).

(ii) Customer recognizes that ChoicePoint cannot be responsible for the negligent or intentional acts of third parties and releases ChoicePoint and its affiliated companies and their officers, agents, and employees from liability for such negligent or intentional acts including, but not limited to (i) any negligence of third parties in connection with the accuracy of test results, including the accuracy or completeness of information provided by Customer's applicants or employees, (ii) any negligence of third parties in connection with the performance of specimen collection, alcohol testing, or physical exams and (iii) any defective product regardless of whether it is a manufacturing or design defect or a result of misuse. The foregoing shall not prevent legal recourse against ChoicePoint's subcontractor testing laboratories or collection sites by ChoicePoint or Customer.

(c) Neither party shall be liable to the other party for any indirect, consequential, special or incidental damages of the other party.

(d) All indemnification obligations above relating to indemnification for losses, damages or claims are contingent on the indemnified party providing reasonable notice to the indemnifying party of the claim or other matter giving rise to the right of indemnification. The indemnifying party shall be entitled to conduct the defense with the reasonable cooperation of the indemnified parties.

- (e) All such indemnification provisions articulated above shall survive any expiration or termination of this Agreement.

5. Customer Security Obligations

Customer agrees to do the following in order to preserve the security of the Services being provided pursuant to this Agreement:

(a) **Misuse of Services or Information.** Customer agrees to take appropriate measures so as to protect against the misuse and/or unauthorized access of ChoicePoint's Services through any methods, including unauthorized access through or to Customer's user identification numbers or passwords ("Account ID's"). Such misuse or unauthorized access shall include any disclosure, release, viewing or other unauthorized access to information such as social security numbers, driver's license numbers or dates of birth. Customer agrees that ChoicePoint may temporarily suspend Customer's access for up to ten (10) business days pending an investigation of Customer's use or access. Customer agrees to cooperate fully with any and all investigations. If any misuse or unauthorized access is found, ChoicePoint may immediately terminate this Agreement without notice or liability of any kind.

(b) **Customer Account Maintenance.** Customer is responsible for the administration and control of Account ID's by its employees and third parties, and shall identify a security administrator to coordinate with ChoicePoint. Customer shall manage all Account ID's, and notify ChoicePoint promptly if any Account ID becomes inactive or invalid. Customer shall follow the policies and procedures of ChoicePoint with respect to account maintenance as same may be communicated to Customer from time to time.

(c) **Security Event.** In the event that Customer learns or has reason to believe that ChoicePoint data has been disclosed or accessed by an unauthorized party, Customer will immediately give notice of such event to ChoicePoint. Furthermore, in the event that Customer has access to or acquires individually identifiable information (e.g., social security numbers, driver's license numbers or dates of birth) in relation to the Agreement, the following shall apply: Customer acknowledges that upon unauthorized acquisition of such individually identifiable information (a "Security Event"), Customer shall, in compliance with law, notify the individuals whose information was disclosed that a Security Event has occurred. Also, Customer shall be responsible for any other legal obligations which may arise under applicable law in connection with such a Security Event unless the Security Event resulted from the willful or negligent act or omission of ChoicePoint or any of its subcontractors or its or their officers, directors, affiliates, agents or employees.

6. Miscellaneous Provisions.

(a) This Agreement and any attachments hereto constitute the entire agreement between the parties and supersedes all prior understandings, written or oral between the parties with respect to the subject matter hereof. No changes or alterations may be made to this Agreement unless in writing signed by duly authorized representatives of each party to this Agreement.

(b) Each party (and its employees) is and shall remain an independent contractor. Neither party is authorized to assume or create an obligation or responsibility, express or implied, on behalf of, or in the name of, the other party or to bind the other party in any manner.

(c) ChoicePoint shall have the right to reveal the existence of this Agreement and the terms or conditions thereof in any ChoicePoint publication, advertising, publicity release or sales presentation regardless of the medium.

(d) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that neither party shall assign or otherwise transfer

this Agreement or any interest herein without the prior written consent of the other party, which consent shall not be unreasonably withheld.

- (e) ChoicePoint shall not be held liable for any delay in performance or failure to perform any term or condition caused directly or indirectly by fire, explosion, accident, flood, labor trouble, weather condition, any regulation, rule or act of any government or governmental agency, Act of God, armed conflicts, civil commotion or any other cause of like character beyond the reasonable control of ChoicePoint.
- (f) Illinois and federal law will govern this Agreement except for Illinois' conflict of law rules. The invalidity or unenforceability of any one provision of this Agreement shall not impair the validity and enforceability of the remaining provisions.
- (g) The failure of either party to insist on prompt performance of their duties shall not constitute a waiver of that duty. Any such waivers must be provided in a written, executed document.
- (h) Written notices shall be sent to National Safety Alliance, Incorporated, c/o ChoicePoint Services Inc. at 1000 Alderman Drive, Alpharetta, Georgia 30005, Attention: General Counsel and to Customer at the address in the first paragraph of the Agreement unless otherwise noted.
- (i) By signing this Agreement, Customer agrees that ChoicePoint can communicate with Customer via facsimile and electronic mail.

IN WITNESS WHEREOF, the authorized representative of Customer has duly executed this Agreement.

CUSTOMER

By: Ellen J. Baer

Printed Name: Ellen J. Baer

Title: Interim Village Manager

Date: 4-16-08

EXHIBIT A - PRICING ATTACHMENT

SUMMATION OF DRUG-FREE WORKPLACE SERVICES for Village of Orland Park

ChoicePoint will provide a comprehensive Drug-Free Workplace Program for the following fees:

PROGRAM SET-UP (includes the following)..... \$1200.00 (one-time fee)

Policy

- Assistance with Development of Customized Drug-Free Workplace Policy
- Policy Consent Form

Education and Training (one set included in above price)

- Sample Announcement Letter to Employees
- Referral Resources
- Explanation of Master Forms
- Sample Master Forms for Program Administration
- Customized Drug-Free Workplace Sign
- Employee Handbook
- Supervisor Training Manual
- Employee Interactive Internet Training
- Supervisor Interactive Internet Training

☐ Accept ☒ Decline***

CONTRACT PRICING

TESTING SERVICES (includes all of the following)

Program Administration \$89.00 Per Year

- Administration of employee database and test results
- Statistical summary report(s)
- Report delivery by web access, email, secured fax or IVR
- Blind specimen management
- Telephone customer service - questions, comments, concerns

Urine Drug Testing (Conventional)..... \$ 29.35 Per Test / LabCorp PSC

- Collection of specimens at ChoicePoint's approved collection sites
- Specimen collection supplies
- Chain-of-Custody documentation

\$ 40.85 Per Test / Quest PSC

- Transportation of all specimens to certified laboratory
- Laboratory analysis at a HHS/SAMHSA-certified laboratory, includes up to 9-panel drug test (including confirmation on all positives)*
- Additional testing (D&L, 6mam) **\$ 50.00 Per Test**
- Medical Review Officer test review
- Retention of specimens in accordance with HHS/SAMHSA guidelines

Medical Review Office Administrative and Laboratory Management Services include the following:

Administrative Review of DOT Tests

- Donor identification
- Chain-of-Custody Form completion
- Chain-of-Custody documentation
- Signature requirements

Medical Review of Positive Test Results

- Test result analysis
- Donor contact
- Notify Company if unable to contact donor
- Determine if alternative medical explanation for positive result
- If alternative explanation, report as negative
- Verify positive finding, if no alternative explanation
- Report findings to Company

MRO Review For DOT Urine Drug Tests..... \$20.50 Per Test

MRO Review For Non-DOT Urine Drug Tests..... \$20.50 Per Test

Laboratory Management Services

- Customized Laboratory Account Set Up
- Collection kit shipment and coordination
- Transportation of all specimens to certified laboratory
- Specimen collection supplies
- Laboratory analysis at a HHS/SAMHSA-certified laboratory
- Automatic GC/MS confirmation of Positives
- Consolidated Billing

Customer Initials 

ADDITIONAL SERVICES

Adulterant Screening (urine lab-based or urine instant tests) **\$1.50 Per Test**
☒ Accept ☐ Decline
Retest Fee /Split Specimen **\$150.00 Per Test**

Urine Instant Drug Screening Kits Only (minimum order based on product)

• 5-Panel	\$ _____	Per Kit
• 5-Panel (includes adulterants)	\$ _____	Per Kit
• 9-Panel	\$ _____	Per Kit
• Other	\$ _____	Per Kit

Urine Drug Testing (Confirmation Only) \$ _____ Per Test

Recommended to use in conjunction with KIT Only purchase

- Specimen collection supplies
- Chain-of-Custody documentation
- Transportation of all specimens to certified laboratory
- Laboratory analysis at a HHS/SAMHSA-certified laboratory, includes up to 9-panel drug test (including confirmation on all positives)*
- Medical Review Officer test review
- Retention of specimens in accordance with HHS/SAMHSA guidelines

Oral Fluid Instant Drug Screening (minimum order based on product)

• 4-Panel	\$ _____	Per Kit
• 6-Panel	\$ _____	Per Kit

Random Testing Program - Random Testing Services are only available if ChoicePoint will review ALL results

Annual Administration Fee	\$ _____	Per Year
Initial Enrollment Fee	\$ _____	Per Employee
Annual Enrollment Fee (will invoice on the anniversary date of enrollment)	\$ _____	Per Employee/Per Year
Drug & Alcohol Administration for Statistical Record Keeping on tests administered outside ChoicePoint	\$10.00	Per Test
• Initial testing pool set-up		
• Pool maintenance (additions/deletions)		
• Selection processing		
• Follow-up monitoring		

<u>Number of Employees</u>	<u>Annual Fee/Per Pool</u>
01-25	\$150.00
26-50	\$250.00
51-100	\$350.00
101-250	\$425.00
251-500	\$500.00
501-1000	\$750.00
1000+	\$1000.00

After-Hour/Emergency Testing Coordination Services**

After-Hour Drug Test Coordination	\$150.00 Per Event Plus Collection (Includes MRO and Laboratory Fees)
After-Hour Breath Alcohol Test Coordination	\$150.00 Per Event Plus Cost of Test

EXHIBIT A - PRICING ATTACHMENT

Customer Initials AB

Litigation Support

- MRO Litigation Package **\$150.00**
- MRO Telephone Expert Witness Testimony **\$300.00 Per Hour**
- MRO In Person Expert Witness Testimony **\$3,200.00 Per Day**
(Plus travel & expenses)
- MRO In Person/In Town Expert Witness Testimony **\$400.00 Per Hour**
(Plus expenses)
- Laboratory Litigation Package..... **\$250.00**

SPECIFIC CONDITIONS

1. Customer agrees to exclusively utilize the specimen collection sites mutually agreed upon between ChoicePoint and Customer. The fees set forth above include the following components: Collection site identification and coordination, collection kit shipment and coordination, specimen collection, overnight shipment of samples to the testing laboratory, laboratory supplies, laboratory analysis, automatic GC/MS confirmation of positives and MRO review and reporting of test results. However, such fees are contingent upon specimens being collected during the regular hours of operation of collection facilities. Fee for after-hours emergency specimen collection vary depending upon provider.
2. Customer agrees, and will procure the written consent of each of its employees, to permit ChoicePoint to provide its workers' compensation carrier with the results of any post-accident positive drug or alcohol tests.
3. Customer agrees to pay for any express shipping charges (Next Day, 2nd Day or 3-Day Select charges) when Customer requests that items be sent by express delivery.
4. ChoicePoint reserves the right to change the administrative fees for the services to be provided under this Agreement during any renewal period upon giving Company written notice of such change at least sixty (60) days prior to the end of the current term. Company also agrees to re-negotiate the compensation rates if the percentage of positive test results exceeds five percent (5%) of the total number of tests taken for any three (3) month period. If a new agreement is not reached within sixty (60) days of ChoicePoint's original notice to Company, either party may terminate this Agreement upon thirty (30) days advance written notice to the other party.

OTHER AVAILABLE SERVICES/MATERIALS..... (Quote Available Upon Request)

- Additional Employee Handbooks
- Additional Supervisor Training Manuals
- Additional Interactive Internet Training
- Formalized On-Site Training and Education Seminar
- Background Information Checks
- Esteem
- Biometrics
- Stanton Assessment Services

* **Amphetamines, Benzoylcegonine, Cannabinoids, Opiates, Phencyclidine, Barbiturates, Benzodiazepines, Propoxyphene, Methadone.**

- The bolded substances are required under Department of Transportation (DOT) regulations.

** This service is available outside of normal business hours.

*** By declining the program set-up services, please be advised that:

1. Customer hereby acknowledges that it has made the election to implement a substance abuse program (without Policy development assistance) or (utilizing Customer's existing substance abuse policy) and do not intend to use a Drug-Free Workplace Policy developed by ChoicePoint as a guide.
2. ChoicePoint has not conduct any type of review of your policy, including but not limited to legal compliance with applicable statutory and regulatory provisions or court decisions; and
3. ChoicePoint cannot be responsible for and shall not be liable for any incompleteness, omissions or deficiencies with respect to your existing policy or any noncompliance with applicable law, including statutory and regulatory provisions or court decisions.

Customer Initials AB

EXHIBIT A - PRICING ATTACHMENT