

## **PERSONAL SERVICES CONTRACT**

**STATE OF TEXAS**

**COUNTY OF NUECES**

THIS CONTRACT FOR PERSONAL SERVICES is made by and between the County of Nueces, hereinafter called "County" and Tomás Duran, hereinafter called "Contractor" for the purpose of contracting for personal services.

### **WITNESSETH**

**WHEREAS**, Local Government Code, Chapter 262.024, provides for the procurement of personal services; and

**WHEREAS**, Contractor is engaged in the business of employee benefits for employer groups; and

**WHEREAS**, the County desires to contract with Contractor for personal services described as follow: providing services in the area of employee benefits management and consulting;

**NOW, THEREFORE**, the County and the Contractor, in consideration of the mutual covenants and agreements herein contained, do hereby mutually agree as follows:

### **AGREEMENT**

#### **ARTICLE 1**

#### **SCOPE OF SERVICES TO BE PROVIDED BY COUNTY**

The County will furnish items and perform those services for fulfillment of the contract as identified in Attachment A – Services to be provided by the County, attached hereto and made a part thereof this contract.

#### **ARTICLE 2**

#### **SCOPE OF SERVICES TO BE PROVIDED BY CONTRACTOR**

The Contractor shall perform those personal services for the fulfillment of the contract as identified in Attachment B – Services to be provided by the Contractor, attached hereto and made a part thereof this contract.

#### **ARTICLE 3**

#### **CONTRACT PERIOD**

After execution of this contract, the Contractor shall not proceed with the work until authorized in writing by the County to proceed, as provided in Article 5 – Work Authorizations to begin October 1, 2016. This contract shall terminate at the conclusion

of 12 months specifically at the close of business on September 30, 2017, unless extended by supplement agreement duly executed by the Contractor and the County prior to the date of termination, as provided in Article 10 – Supplemental Agreements, or otherwise terminated, as provided in Article 18 – Termination. Any work performed or cost incurred after the date of termination shall be ineligible for reimbursement.

#### **ARTICLE 4 COMPENSATION AND METHOD OF PAYMENT**

The maximum amount payable under this contract is \$7,000.00 per month, unless modified as provided in Article 10 – Supplemental Agreements.

Payments will be made on a monthly basis of \$7,000.00 per month.

The Contractor shall prepare and submit to the County a monthly invoice and a progress report stating the status and description of the work accomplished during the billing period.

The County reserves the right to withhold payment pending verification of satisfactory work.

**The County assumes no liability for work performed or costs incurred prior to the date authorized by the County to begin work, during periods when work is suspended, or subsequent to the contract completion date.**

#### **ARTICLE 5 WORK AUTHORIZATIONS**

The County will issue work authorizations to authorize the Contractor to perform one or more tasks. The work authorization will not waive the County's or Contractor's responsibilities and obligations established in this contract. The contractor's work authorization will be issued by the County Judge.

Upon satisfactory completion of the work authorization, the Contractor shall submit to the County for review and acceptance the deliverables as specified in the executed work authorization.

Work included in a work authorization shall not begin until the County and the Contractor have signed the work authorization. All work must be completed on or before the completion date specified in the work authorization. The Contractor shall promptly notify the County of any event which will affect completion of the work authorization.

## **ARTICLE 6 PROGRESS**

The Contractor shall, from time to time during the progress of the work, confer with the County. The Contractor shall prepare and present such information as may be pertinent and necessary, or as may be requested by the County, in order to evaluate features of the work. Upon request by the County, the Contractor shall make presentations to the Commissioners Court.

At the request of the County or the Contractor, conferences shall be held at the Contractor's office, the County's office, or at other locations designated by the County. These conferences shall also include an evaluation of the Contractor's services and work when requested by the County.

Should the County determine that the progress in production of the work does not satisfy the work schedule, the County will review the work schedule with the Contractor to determine corrective action needed.

The Contractor shall promptly advise the County in writing of events which have a significant impact upon the progress of work, including:

- (1) problems, delays, or adverse conditions which will materially affect the ability to attain contract objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods; this disclosure will be accompanied by a statement of the action taken, or contemplated, and any County assistance needed to resolve the situation; and
- (2) favorable developments or events which would enable meeting the work schedule goals sooner than anticipated.

## **ARTICLE 7 SUSPENSION**

The County may suspend the work, but not terminate the contract, by giving written notice a minimum of five (5) calendar days prior to the date of suspension. The five (5) day notice may be waived if approved in writing by both parties.

The work will be reinstated and resumed in full force and effect within ten (10) calendar days of receipt of written notice from the County to resume the work. The ten (10) day notice may be waived if approved in writing by both parties.

If the County suspends the work, the contract period, as determined in Article 3 – Contract Period, is not affected and the contract will terminate on the date specified unless the contract is amended as provided in Article 10 – Supplemental Agreements.

**ARTICLE 8  
ADDITIONAL WORK**

If the Contractor determines that any work it has been directed to perform is beyond the scope of this agreement and constitutes extra work, it shall promptly notify the County in writing. In the event the County determines that such work constitutes extra work and exceeds the maximum amount payable, the County shall so advise the Contractor and a supplemental agreement may be executed, as provided in Article 10 – Supplemental Agreements.

The Contractor shall not perform any additional work or incur any additional costs prior to the execution, by both parties, of a supplemental agreement. The County shall not be responsible for actions by the Contractor or any costs incurred by the Contractor relating to additional work not directly associated with the performance of the work authorized in this contract or as amended.

**ARTICLE 9  
CHANGES IN WORK**

If the County finds it necessary to request changes to previously satisfactorily completed work or parts thereof which involve changes to the original scope of services or character of work under the contract, the Contractor shall make such revisions if requested and as directed by the County. This will be considered additional work and paid for as specified under Article 8 – Additional Work.

The Contractor shall make such revisions to the work to correct errors appearing therein, when required to do so by the County. No additional compensation will be paid for the correction of errors.

**ARTICLE 10  
SUPPLEMENTAL AGREEMENTS**

The terms of this contract may be modified by supplemental agreement if the County determines that there has been a significant change in the scope, complexity, or character of the service to be performed, or the duration of the work. Additional compensation, if appropriate, shall be identified as provided in Article 4 – Compensation and Method of Payment.

Any supplement agreement must be executed by both parties within the contract period specified in Article 3 – Contract Period.

**No claim for extra work done or materials furnished shall be made by the Contractor until full execution of the supplemental agreement and authorization to proceed is issued by the County. The County reserves the right to withhold payment pending verification of satisfactory work performed.**

**ARTICLE 11  
PUBLIC INFORMATION ACT**

All data, basic sketches, charts, calculations, plans, specifications, and other documents created or collected under the terms of this contract are the exclusive property of the County and shall be furnished to the County upon request. All documents prepared by the Contractor and all documents furnished to the Contractor by the County shall be delivered to the County upon completion or termination of this contract. The Contractor, at its own expense, may retain copies of such documents or any other data which it has furnished the County under this contract. Release of information will be in accordance with the Texas Public Information Act.

**ARTICLE 12  
PERSONNEL, EQUIPMENT AND MATERIAL**

The Contractor shall furnish and maintain, at its own expense, office space for the performance of all services, and adequate and equipment to perform the services as required.

**ARTICLE 13  
SUBCONTRACTING**

The Contractor shall not assign, subcontract or transfer any portion of the work under this contract. **All work under this contract shall be performed by Contractor personally.**

**ARTICLE 14  
EVALUATION OF WORK**

The County and its authorized representatives shall have the right at all reasonable times to review or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If a review or evaluation is being made on the premises of the Contractor, the Contractor shall provide all reasonable facilities and assistance for the safety and convenience of the County representatives in the performance of their duties. If funds by other agencies or entities are to be used for payment of the services under this contract, the Contractor's services and work may be subject to periodic review and approval by other agencies or entities, including city, county, state, and/or federal agencies.

**ARTICLE 15  
SUBMISSION OF REPORTS**

All applicable study reports shall be submitted in preliminary form for review by the County before a final report is issued. The County's comments on the Contractor's preliminary report shall be addressed in the final report.

**ARTICLE 16  
COMPUTER DOCUMENTS AND INFORMATION EXCHANGE**

All computer files must be compatible with the County's computer systems without conversion or modifications and must plot consistent with any reproducible plots submitted.

All plots and graphics media provided by the Contractor shall be delivered to the County. Final payment for the work associated with this contract will not be made until the files furnished by the Contractor have been demonstrated to be usable in the required formats.

**ARTICLE 17  
VIOLATION OF CONTRACT TERMS / BREACH OF CONTRACT**

Violation of the contract terms or breach of contract by the Contractor shall be grounds for termination of the contract and any increased cost arising from the Contractor's default, breach of contract, or violation of contract terms shall be paid by the Contractor. This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

**ARTICLE 18  
TERMINATION**

This contract shall terminate at the close of business on September 30, 2017, unless extended as provided in Article 10 – Supplemental Agreements.

This contract may be terminated before the stated termination date by any of the following conditions:

1. By mutual agreement and consent, in writing, of both parties;
2. By the County, by notice in writing to the Contractor as a consequence of failure by the Contractor to perform the services set forth herein in a satisfactory manner;
3. By either party, upon the failure of the other party to fulfill its obligations as set forth herein;

4. By the County, for reasons of its own and not subject to the mutual consent of the Contractor upon not less than thirty (30) calendar days written notice to the Contractor; and
5. By written notice from the County upon satisfactory completion of all services and obligations described herein.

Should the County terminate this contract as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to the Contractor. In determining the value of the work performed by the Contractor prior to termination the County shall be the sole judge. Compensation for work at termination will be based on a percentage of the work completed at that time. Should the County terminate this contract under Item 4 of the above paragraph, the amount charged during the thirty (30) calendar day notice period shall not exceed the amount charged during the preceding thirty (30) calendar days.

If the Contractor defaults in the performance of this contract or if the County terminates this contract for fault on the part of the Contractor, the County will give consideration to the actual costs incurred by the Contractor in performing the work to the date of default, the amount of work which was satisfactorily completed to the date of default, the value of the work which is usable to the County, the cost to the County of employing another to complete the work required and the time required to do so, and other factors which affect the value to the County of the work performed at the time of default.

The termination of this contract and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of the County and the Contractor under this contract except the obligations set forth in Articles 11, 14, 19, 20, 21 and 22 of this contract. If the termination of this contract is due to the failure of the Contractor to fulfill its contract obligations, the County may take over the project and prosecute the work to completion. In such case, the Contractor shall be liable to the County for any additional cost occasioned to the County.

## **ARTICLE 19 COMPLIANCE WITH LAWS**

The Contractor shall comply with all applicable Federal, State, and local laws, statutes codes, ordinances, rules, and regulations, and the orders and decrees of any court, or administrative bodies or tribunals, in any manner affecting the performance of this contract, including, without limitation, worker's compensation laws, minimum salary and wage statues and regulations, and licensing laws and regulations. Contractor specifically agrees to comply with HIPAA and the HITECH Act as further described in Attachment C herein attached an incorporated in its entirety. When required, the Contractor shall furnish the County with satisfactory proof of its compliance.

It is expressly understood by County and Contractor, that from the date of award of Contractor to one year after termination or expiration of contract term, it is prohibited for any county official or employee thereof, to receive gifts described by Section 5.02 of the County Personnel or Civil Service Rules, and/or campaign or political contributions regardless of amount from Contractor or principal owners of said Contractor. County Official is defined as those individuals described as county and precinct officers in Subchapter B of Chapter 152 of the Local Government Code. Contractor is furthermore prohibited from making political campaign or personal contributions to candidates for county and precinct office from the date of award of Contractor to one year after termination or expiration of contract term. It is also prohibited for Contractor to contribute to employee associations or for the benefit of groups of employees.

## **ARTICLE 20 INDEMNIFICATION**

**THE CONTRACTOR SHALL SAVE HARMLESS THE COUNTY AND ITS OFFICERS AND EMPLOYEES FROM ALL CLAIMS AND LIABILITY DUE TO ACTIVITIES OF ITSELF, ITS AGENTS, OR EMPLOYEES PERFORMED UNDER THIS CONTRACT AND WHICH ARE CAUSED BY OR RESULT FROM ERROR, OMISSION, OR NEGLIGENT ACT OF THE CONTRACTOR OR OF ANY PERSON EMPLOYED BY THE CONTRACTOR. THE CONTRACTOR SHALL ALSO SAVE HARMLESS THE COUNTY FROM ANY AND ALL EXPENSE, INCLUDING, BUT NOT LIMITED TO, ATTORNEY FEES WHICH MAY BE INCURRED BY THE COUNTY IN LITIGATION OR OTHERWISE RESISTING SAID CLAIM OR LIABILITIES WHICH MAY BE IMPOSED ON THE COUNTY AS A RESULT OF SUCH ERROR, OMISSION, OR NEGLIGENT ACTIVITY BY THE CONTRACTOR, ITS AGENTS, OR EMPLOYEES.**

## **ARTICLE 21 CONTRACTOR'S RESPONSIBILITY**

The Contractor shall be responsible for the accuracy of its work and shall promptly make necessary revisions or corrections resulting from its errors, omissions, or negligent acts without compensation.

## **ARTICLE 22 RETENTION, AVAILABILITY OF RECORDS AND AUDIT REQUIREMENTS**

The Contractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to cost incurred and shall make such materials available at its office during the contract period and for four (4) years from the date of final payment

under this contract or until pending litigation has been completely and fully resolved, whichever occurs last. The County or any of its duly authorized representatives shall have access during normal business hours to any and all books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts, transcriptions, and for checking the amount of work performed by the Contractor.

**ARTICLE 23  
SUCCESSORS AND ASSIGNS**

The Contractor and the County do hereby bind themselves, their successors, executors, administrators, and assigns to each other party of this agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this contract.

The Contractor shall not assign, subcontract, or transfer its interest in this contract.

**ARTICLE 24  
SEVERABILITY**

In the event any one or more of the provisions contained in this contract, for any reason, shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and; this contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**ARTICLE 25  
PRIOR CONTRACT SUPERSEDED**

This contract constitutes the sole agreement of the parties hereto and supercedes any prior understandings or written or oral contracts between the parties respecting the subject matter defined herein.

**ARTICLE 26  
NOTICES**

All notices to either party by the other, required under this contract, shall be personally delivered or mailed to such party at the following respective address:

**COUNTY**

Samuel Loyd Neal, Jr.  
Nueces County Judge  
901 Leopard St., Rm. 303  
Corpus Christi, TX 78401

**CONTRACTOR**

Tomás Duran  
P.O. Box 6666  
Corpus Christi, TX 78466

**ARTICLE 27  
GOVERNING LAW AND VENUE.**

This Agreement shall be construed under and in accord with the law of the State of Texas. Venue shall be in Nueces County, Texas.

IN WITNESS WHEREOF, the County and the Contractor have executed these presents in duplicate.

**COUNTY OF NUECES**

**CONTRACTOR:** Tomás Duran

By: \_\_\_\_\_  
**County Judge**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**County Clerk**

**List of Attachments**

- Attachment A – Services to be Provided by the County
- Attachment B – Services to be Provided by the Contractor
- Attachment C – Business Associate Agreement

ATTACHMENT A  
SERVICES PROVIDED BY COUNTY

- A. County Agrees to cooperate and provide information as requested by Contractor for the benefit of County.

ATTACHMENT B  
SERVICES PROVIDED BY CONTRACTOR

Contractor proposes to provide the following professional planning to assist Purchasing Agent for the County and offer the following, but not limited to:

- A. Monitor the self-funded group health program on its financial performance and report to the designated officials as determined by the County.
- B. Review and analyze the County optional employee benefits program and provide recommendations regarding the same.
- C. Draft request for proposals and provide analysis of proposals for the optional employee benefits program, if necessary.
- D. Attendance at County Commissioners Court meetings, as required.
- E. Continuous review/analysis and recommendations of the group benefits program and formal review of the program's performance on a quarterly basis.
- F. Provide advice and make recommendations to County related to available benefit options, such as life insurance, disability, dental, employee investment/savings options, and other related coverages.
- G. Review and analyze the County's current coverage for property & casualty, automobile, and general liability insurance, and assist in developing request for proposals and evaluating the proposals.