

## **CONSULTING AGREEMENT**

This Consulting Agreement ("Agreement") is made and entered into by and between WILLIAMSON COUNTY, TEXAS, a political subdivision of the State of Texas (the "County") AND SMITH & ASSOCIATES CONSULTING (the "Consultant") for the provision of consultant services to County in relation to its Employee Health Benefit Plan.

### **Article I - Recitals**

#### **Section 1.01 - Parties**

- A. County provides life, medical, dental, workers' compensation, and other related insurance or benefit coverage for their employees.
- B. Consultant is a consulting company doing business at P. O. Box 92398, Southlake, Texas 76092.
- C. County desires to engage the services of the Consultant to perform the duties and functions set forth in this Agreement, and the Consultant desires to perform such duties for County, on the terms and conditions set forth herein.

#### **Section 1.02 - Purpose**

The parties enter into this Agreement in order to provide a full statement of their respective responsibilities. This Agreement supersedes any and all other understandings or Agreements between the parties, either oral or in writing, with respect to the subject matter hereof; any understanding, Agreement, statement, or promise relating to the subject matter hereof that is not contained in the Agreement or an addendum hereto shall not be valid or binding.

### **Article II - Rights and Obligations of Parties**

#### **Section 2.01 - Consultant**

County seeks to retain the Consultant as its advisor with respect to the matters specified in Section 2.06 of this Agreement.

### **Section 2.02 - Independent Contractor**

The Consultant is and shall at all times be deemed to be an independent contractor and shall be wholly responsible for the manner in which the Consultant performs the services required of him by the terms of this Agreement. Nothing herein, contained shall be construed as creating the relationship of employer and employee, or principal and agent, between County and the Consultant or any of the Consultant's agents or employees.

### **Section 2.03 - Competition**

So long as this Agreement remains in effect, the Consultant shall not without the consent of County accept any employment by, make financial investment in, become actively interested in, take part in the affairs of, or give advice and counsel to, any life, health, or accident insurance company that does any business with County.

### **Section 2.04 - Outside Services**

The Consultant may engage in, and be separately compensated for, any business or activity, so long as the service, investment, or activity does not violate the provisions of Section 2.03 of this Agreement or interfere with the services required to be provided by the Consultant to County under the terms of this Agreement.

### **Section 2.05 - Compensation**

The Consultant shall be paid by County for consulting services provided under this Agreement. During the initial term of this Agreement, the Consultant's fee for performing all services described under Section 2.06 below shall be THREE THOUSAND AND NO/100 DOLLARS (\$3,000.00) per month. Provided that this Agreement renews following the initial term, Consultant agrees to perform all services described under Section 2.06 below at the same rate of THREE THOUSAND AND NO/100 DOLLARS (\$3,000.00) per month. If this Agreement is renewed for an additional third year, the Consultant hereby agrees to not increase the monthly rate more than 5% during the third contract year. The Consultant shall invoice the County each month and the County shall pay such invoices as set forth herein below (See Section 4.17 - Payment, Interest and Late Payments).

Should County request any other services of the Consultant, the fee for such additional services shall be discussed and agreed upon, in writing, with County before the services are rendered.

#### **Section 2.06 - Duties of Consultant**

The Consultant shall provide the following services:

- A. The Consultant shall provide any necessary expertise and knowledge to assist County in underwriting, contract negotiations, renewals, rates, plan design or redesign, communication, system hardware and software evaluation, meetings with insurance companies, third party administrators, and providers;
- B. The Consultant shall be responsible for preparing and disseminating any written reports of documents, which may be necessary to fully describe Consultant's advice and counsel regarding the expertise set forth in this section;
- C. The Consultant shall organize, participate and provide coordination of employee enrollment meetings;
- D. The Consultant shall provide vendor management services, and assistance in resolving disputes with insurance providers in relation to claims;
- E. The Consultant shall also provide any and all services set forth in Williamson County's Request for Proposals of Health & Welfare Benefits Broker/Consultant Services – Request for Proposal #10WCAP126, as well as any services set forth in the proposal submitted by Consultant in response to said Request for Proposal #10WCAP126;
- F. The Consultant shall attend all Board Meetings and Benefit Committee Meetings, as requested by the County's staff.

The above described services of Consultant shall cover all of the County's health benefit plans. Any other services not specifically described above must be approved by both parties.

#### **Section 2.07 – Optional Audits**

During any term of this Agreement, County reserves the right to request that Consultant perform one or more of the following types of audits at the rates set forth below; provided, however, the County shall retain the complete and sole discretion as to requesting the performance of such audit(s) and the parties hereto

agree that the County shall not be obligated to request the performance of such audit(s).

**A. Random Sample Audit:**

For a Random Sample Audit, Consultant shall utilize statistically valid random sampling techniques developed by Herbert Arkin's Handbook of Sampling for Auditing and Accounting, third edition. Consultant shall randomly select transactions from the population of the total of paid claims transaction in the specified time period to be audited in order to produce results at a 95 percent confidence level, which means that similar findings would be identified in 95 out of 100 like audits.

Based upon the population of total claims transactions, Consultant will select a random sample to arrive at a number which will provide statistically significant results. Based on information provided by the County, Consultant will estimate that, in order to achieve the statistical standards requested, Consultant will have to review 204 claims randomly. As an example, if 100,000 transactions were processed, a sample of 204 claims would produce results at a  $\pm 3.0$  percent precision (standard deviation) at a 95 percent confidence level.

For each Random Sample Audit, Consultant will be on-site for three (3) days to conduct its Random Sample Audit and Consultant will include all pre and post work and reports in the fees. Consultant shall perform a Random Sample Audit for TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00). The said fee for the Random Sample Audit includes all expenses including travel.

**B. Focus Claims Audit**

For a Focus Claims Audit, Consultant shall audit 100% of all claims electronically for a specified time period. After review of the results, Consultant will select up to 300 claims for on-site review. In the event that the County's agreement with its Third Party Administrator does not allow for the audit of 300 claims, Consultant shall audit on-site as many claims as the County's Third Party Administrator will allow, at no additional cost to County. The claims to review will be selected from various categories (i.e. large claims, benefit exclusions, duplicates, benefit percentages, etc).

For each Focus Claims Audit, Consultant will be on-site for five (5) days to conduct its Focus Claims Audit and Consultant will include all pre and post work and reports in the fees. Consultant shall perform a Focus Claims Audit for THIRTY FIVE THOUSAND AND NO/100 DOLLARS (\$35,000.00). The said fee for the Focus Claims Audit includes all expenses including travel.

### **Article III - General Provisions**

#### **Section 3.01 - Term**

The initial term of this Agreement shall commence on [REDACTED], 20[REDACTED] and continue thereafter until September 30, 2010, following which time it shall be automatically extended for successive periods of one (1) year terms thereafter, subject to the provisions of Section 3.02 of this Agreement.

#### **Section 3.02 - Termination**

This Agreement shall terminate upon the occurrence of any of the following events:

- a. The dissolution or liquidation of County's insurance trust;
- b. The Death or total disability of the Consultant. Total disability is any disability that prevents the Consultant from performing his duties hereunder for a period of sixty (60) consecutive days, or ninety (90) non-consecutive days, during the term;
- c. A breach by the Consultant of any of the covenants under this Agreement;
- d. Thirty (30) days written notice by either party.

In the event of termination by County, the Consultant shall cease all work for County under this Agreement upon receipt of the written notice unless instructed in writing by County to do otherwise.

### **Section 3.03 - Payment on Termination**

In the event of termination of this Agreement pursuant to Section 3.02, the Consultant shall be entitled to compensation at the rate specified in Section 2.02 prorated up to the date of termination.

### **Section 3.04 - Confidentiality**

Subject to the requirements of the Public Information Act, Chapter 552.001 of the Texas Government Code, the Consultant covenants and agrees that he shall not, at any time during the term of this Agreement, directly or indirectly, divulge or disclose for any purpose whatsoever, any information concerning County that has been developed for County by the Consultant, or obtained by him for County, or disclosed to him by County, as a result of the performance of his work, duties, and obligations under this Agreement to the extent allowed by law. It is agreed that the provisions of this Section 3.04 shall be applicable and enforceable, unless the terms and conditions of this Section 3.04 are expressly waived on behalf of County and reduced to an instrument in writing signed by County.

## **Article IV - Miscellaneous**

### **Section 4.01 – Construction; Severability**

This Agreement shall be construed in accordance with the laws of the State of Texas. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is the desire and intention of each that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

### **Section 4.02 - Paragraph Headings**

All paragraph headings in this Agreement are inserted for convenience only.

#### **Section 4.03 - Successors in Interest**

This Agreement shall be binding upon, and inure to the benefit of, the successors in interest and assigns of the parties hereto.

#### **Section 4.04 - Notice**

Any notice to be given hereunder shall be in writing and may be affected by personal delivery, in writing or by registered or certified mail, return receipt requested, addressed to the proper party, at the following address:

CONSULTANT:                      Smith and Associates Consulting  
   P. O. Box 92398  
   Southlake, TX 76092

COUNTY:                              Williamson County  
   c/o: Lisa Zirkle,  
   Director of Williamson County  
   Human Resources  
   Human Resources Department  
   301 S.E. Inner Loop, Suite 108  
   Georgetown, Texas 78626

#### **Section 4.05 – Performance; Venue and Governing Law**

This Agreement shall be performed in Williamson County, Texas. Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in either Williamson County, Texas, and the parties hereto expressly consent and submit to such jurisdiction and venue. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

#### **Section 4.06 - Assignment**

This Agreement may not be assigned without the written consent of all parties.

#### **Section 4.07 - Reference to Parties**

When referring to the Consultant, it shall refer to and be binding upon Eric D. Smith, his predecessors, successors, assigns, heirs, executors, administrators, legal representative and all other persons, firms, or corporations in privity with County.

#### **Section 4.08 – Incorporation of Request for Proposal and Proposal**

The parties hereto agree that the terms and conditions of Williamson County's Request for Proposals of Health & Welfare Benefits Broker/Consultant Services – Request for Proposal #10WCAP126 and the Proposal submitted by Consultant in response to said Request for Proposal #10WCAP126 shall both be incorporated herein by reference for all purposes. If there is a conflict between the terms, covenants and/or conditions of said Request for Proposal #10WCAP126, Consultant's Proposal and the terms of this Agreement, the following documents shall control in the order of precedence listed (most controlling listed first and the least controlling listed last): Request for Proposal #10WCAP126; this Agreement and Consultant's Proposal.

#### **Section 4.09 - Force Majeure**

If the party obligated to perform is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of said party, the other party shall grant such party relief from the performance of this Agreement. The burden of proof for the need of such relief shall rest upon the party obligated to perform. To obtain release based on force majeure, the party obligated to perform shall file a written request with the other party.

#### **Section 4.10 - Indemnification of County**

CONSULTANT ALL INDEMNIFY, DEFEND, PROTECT, AND SAVE HARMLESS WILLIAMSON COUNTY, ITS OFFICIALS AND EMPLOYEES AND ITS AGENTS AND AGENTS' EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LIABILITY, LOSS, DAMAGE, REASONABLE ATTORNEY'S FEES, COSTS, AND EXPENSES (INCLUDING, BUT NOT LIMITED TO EXPENSES RELATED TO EXPERT WITNESSES) OF ANY KIND WHATSOEVER, TO THE EXTENT ARISING FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OF CONSULTANT OR ANY OF ITS



**EMPLOYEES AND ITS AGENTS AND AGENTS' EMPLOYEES IN CONNECTION WITH THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT.**

**Section 4.11 - Compliance with Laws**

Each party to this Agreement shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, salary and wage statutes and regulations, licensing laws and regulations.

**Section 4.12 - Entity Status**

By Consultant's signature below, I certify that Consultant is a Texas sole proprietorship, duly authorized to transact and do business in Williamson County, Texas.

**Section 4.13 - No Waiver of Immunities**

Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

**Section 4.14 - No Waiver**

The failure or delay of any party to enforce at any time or any period of time any of the provisions of this Agreement shall not constitute a present or future waiver of such provisions nor the right of either party to enforce each and every provision. Furthermore, no term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of or excuse for any other, different or subsequent breach.

#### **Section 4.15 - County's Right to Audit**

Consultant agrees that County or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Consultant which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Consultant agrees that County shall have access during normal working hours to all necessary Consultant facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. County shall give Consultant reasonable advance notice of intended audits.

#### **Section 4.16 - Appropriation of Funds by County**

County believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement. Consultant understands and agrees that the County's payment of amounts under this Agreement is contingent on the County receiving appropriations or other expenditure authority sufficient to allow the County, in the exercise of reasonable administrative discretion, to continue to make payments under this Agreement.

#### **Section 4.17 - Payment, Interest and Late Payments**

County's payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. Invoices shall be paid by County within thirty (30) days from the date of the Williamson County Auditor's receipt of an invoice. Interest charges for any late payments shall be paid by County in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of County's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. In the event that a discrepancy arises in relation to an invoice, such as an incorrect amount on an invoice or a lack of documentation that is required to be attached to an invoice to evidence the amount claimed to be due, County shall notify Consultant of the discrepancy. Following County's notification of any discrepancy as to an invoice, Consultant must resolve the discrepancy and resubmit a corrected or revised invoice, which includes all required support documentation, to the Williamson County Auditor.

County shall pay the invoice within thirty (30) days from the date of the Williamson County Auditor's receipt of the corrected or revised invoice. County's payment of an invoice that contains a discrepancy shall not be considered late, nor shall any interest begin to accrue until the thirty-first (31<sup>st</sup>) day following the Williamson County Auditor's receipt of the corrected or revised invoice.

#### **Section 4.18 - Texas Public Information Act**

To the extent, if any, that any provision in this Agreement is in conflict with Tex. Gov't Code 552.001 et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to County as to whether or not the same are available to the public. It is further understood that County's officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that County, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to County by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.

#### **Section 4.19 - Entire Agreement**

This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by each party to this Agreement. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS AGREEMENT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE WILLIAMSON COUNTY COMMISSIONERS COURT.

In Witness Whereof, the parties hereto have duly executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ERIC D. SMITH D/B/A  
SMITH & ASSOCIATES  
CONSULTING

WILLIAMSON COUNTY, TEXAS,  
a political  
subdivision of the State of Texas

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

Title: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

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