

## CONSULTING SERVICES AGREEMENT

By and Between  
Collin County, Texas  
and  
MGT of America, Inc.

**THIS AGREEMENT** is made this 7 day July 2011, by and between the County of Collin, Texas ("Client"), and MGT of America, Inc., a Florida Corporation ("MGT").

In consideration of the mutual covenants set forth in this Agreement, the parties agree as follows:

### 1. Description of Services.

MGT shall, as an independent contractor, provide the services specified in section 1.1 below ("the Services"), on the schedule specified in section 1.2 below.

#### 1.1 Scope of Services

MGT shall provide to Client the following services:

*A Countywide OMB A-87 central services cost allocation plan, using the simplified method, based on actual costs for the Fiscal Year (FY) ending September 30, 2010.*

*An Indirect Cost Rate Proposal based on actual costs for the FY ending September 30, 2010.*

*Negotiation of completed cost allocation plans with the appropriate federal and /or state representatives, if requested (United States Department of Health and Human Services and the state of Texas Departments of Health and Family Services and Workforce Development, as well as others).*

*Consultant shall furnish the County with professional consulting services as more particularly set forth in Attachment B, MGT of America, Incorporated's proposal, attached hereto and incorporated by this reference in full herein.*

#### 1.2 Timetable for Services.

The Services shall be performed and the product(s) of the services shall be delivered on the following schedule:

*The proposed services will be completed in 12 weeks from kick-off to delivery of the final cost allocation plan and indirect cost rate proposal, assuming key data is made available in a timely manner.*

*The annual project will commence on a mutually agreeable date.*

### 2. Compensation.

For its work under this Agreement, MGT shall be paid a fixed fee of \$14,250 for the OMB A-87 cost allocation plan and indirect cost rate proposal. This fee shall be paid on the following schedule:

*40% of the contract amount (\$5,700) will be invoiced following completion of initial on-site work including department interviews.*

*40% of the contract amount (\$5,700) will be invoiced following delivery of the draft cost allocation plan.*

*20% of the contract amount (\$2,850) will be invoiced following submittal of the final cost allocation plan and indirect cost rate proposal.*

Payment will be made in accordance with V.T.C.A., Government Code, Title 10, Subtitle F, Chapter 2251.

The payment schedule percentages will be applicable to fees paid in each option year.

### **3. Term, Renewal Options, and Termination.**

This agreement shall become effective upon its execution and delivery by the parties and shall remain in effect until completion of, and full payment for, the Services. For record keeping purposes, the term of this Agreement shall be from date of final execution through September 30, 2011.. At Client's option and approved by MGT, the contract may be renewed for two (2) additional one (1) year periods.

The Client reserves the right to exercise an option to renew the contract for two (2) additional plan years (fiscal years 2011 and 2012) provided such option is agreed upon by both parties. The fees to prepare each year's cost allocation plan and indirect cost allocation rates as described in 1.1 are as follows:

Fiscal Year	Fixed Fee
2011	\$12,500
2012	\$13,000

This contract may be terminated prior to completion of the Services at the option of either party, upon delivery of written notice by the terminating party to the other party. In the event of early termination by Client, MGT shall be paid, upon invoicing in accordance with this Agreement, the agreed compensation. If, due to termination, there is no agreed value for the services performed to date, MGT's standard hourly rates plus expenses incurred shall apply for Services performed prior to termination.

### **4. Independent Contractor Status**

The relationship of MGT to Client is that of an independent contractor, and nothing in this Agreement shall be construed as creating any other relationship. As an independent contractor, MGT shall comply with all laws relating to federal and state income taxes, associated payroll and business taxes, licenses and fees, workers compensation insurance, and all other applicable state and federal laws and regulations. Neither MGT nor anyone employed or subcontracted by MGT shall be, represent, act, purport to act, or be deemed to be an agent, representative, employee or servant to Client.

### **5. Project Managers**

**Mark Epstein** shall serve as Project Manager and point of contact for MGT under this Agreement. **Janna Benson-Caponera** shall serve as Project Manager and point of contact for Client under this Agreement. By written notice to the other party, either party may change the identity of its project manager during the term of this Agreement.

## **6. Miscellaneous**

### **6.1 No Continuing Waiver**

The failure or forbearance by either party in exercising any remedy available to it upon a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or continuing breach by either party.

### **6.2 Entire Agreement.**

**This Agreement, including the Attachments hereto identified as “A” and “B” constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.**

### **6.3 Subcontracting and Assignment.**

Respondent shall at no time transfer any portion of the Cost Allocation Plan and Indirect Cost Rate Proposal development to a third party agency without the consent of the county;

### **6.4 Interpretation, Venue, and Severability.**

This agreement shall be construed, interpreted, and enforced in accordance with Texas law without regard to conflicts of laws principles. Should any provision of this Agreement be held invalid or unenforceable by final judgment of a court of competent jurisdiction, it is the parties' intention that the remainder of this Agreement shall nevertheless be given effect as written. Any action arising out of or relating to this Agreement may be brought only in the Texas state court having jurisdiction and located in Collin County, Texas. If more than one party executes this Agreement as Client, then each such party shall be jointly and severally responsible for Client's performance and payment under this Agreement.

### **6.5 Prior Performance.**

Purchase Order(s) shall be generated by Collin County to the vendor. Collin County will not be responsible for any orders placed/delivered without a valid purchase order number.

The title and risk of loss of the product(s) shall not pass to Collin County until Collin County actually receives and takes possession of the product(s) at the point or points of delivery. Collin County shall generate a purchase order(s) to the Vendor/Contractor/Provider and the purchase order number must appear on all itemized invoices.

### **6.6 Notices.**

All written notices, demands or requests pursuant to this Agreement may be served (as an alternate to personal service) by registered or certified mail or air freight services that provide proof of delivery, with postage and fees thereon fully prepaid, and addressed to the parties

so to be served as follows:

If to MGT:

MGT of America, Inc.  
502 E 11<sup>th</sup> Street Suite 300  
Austin TX 78701

If to County:

Collin County Administration Building  
Attn: Purchasing Agent  
2300 Bloomdale Road, Suite 3160  
McKinney, Texas 75071

Service of any such notice or demand so made by mail shall be deemed complete on the day of actual delivery as shown by the addressee's registry or certification receipt. Either party hereto may, from time to time, by written notice served upon the other as aforesaid, designate a different mailing address, or (a) different or additional person(s) to which or to whom all such notices or demands are thereafter to be addressed. Persons named to receive copies of notices are listed for accommodation only, and are not required to be personally served to comply with service of notice on a party.

IN WITNESS WHEREOF, this agreement has been executed and delivered by Client and MGT on the date first written above.

**COLLIN COUNTY, TEXAS**

**MGT OF AMERICA, INC.**

*Mihaly Kain*  
*for Frank Ybarbo*  
\_\_\_\_\_  
Frank Ybarbo  
Purchasing Agent  
7/7/11

*Mark Epstein*  
\_\_\_\_\_  
Mark Epstein  
Senior Partner  
July 1, 2011

Date:

Date:

2300 Bloomdale Road  
McKinney, Texas 75071

502 E. 11<sup>th</sup> Street, Suite 300  
Austin, TX 78701

FEIN: 75-6000873

512-476-4697  
FEIN: 59-1576733

2011-410-06-27