

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE
CITY OF CORPUS CHRISTI,
NUECES COUNTY,
AND
ALTERNATE HEALTH AUTHORITY**

THE STATE OF TEXAS §
 §
COUNTY OF NUECES §

KNOW ALL BY THESE PRESENTS:

Section 1. Parties. This alternate health authority agreement ("**Agreement**") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("**City**"), acting through its City Manager or the City Manager's designee ("**City Manager**"), Nueces County ("**County**"), a political subdivision of the State of Texas, acting through its County Judge or the County Judge's designee ("**County Judge**"), and Dr. Colette Simon, M. D., a licensed medical doctor of the State of Texas, in his/her individual capacity ("**Dr. Simon**"). For the purposes set out in this document, the City and County, acting as an organized local public health district pursuant to an existing cooperative agreement between the parties, may collectively be referred to as the "**Health District**" in this Agreement.

Section 2. Engagement. The Health District engages Dr. Simon to provide professional services for the Health District in the capacity of the Health District's appointed alternate local health authority ("**Alternate Health Authority**"), as the specific term and duties are defined under State law, as a designee of and for Dr. William Burgin, Jr., M. D. ("**Dr. Burgin**").

Section 3. Contract Administrator. This Agreement will be administered by the City on behalf of the purposes of the Health District.

Section 4. Term. Following appointment by the Health District's governing bodies and execution by the last party, the term of this Agreement commences with the date of the appointment and terminates under the provisions of Section 19 of this Agreement.

Section 5. Services. In consideration of payment to be made for services rendered, Dr. Simon agrees to provide professional services including, but not limited to, serving as the Medical Director, serving as the local Alternate Health Authority, and performing the duties specified in Chapter 121 of the Texas Health and Safety Code for the Health District, whose main facility is located at 1702 Horne Road, Corpus Christi, Nueces County, Texas, and to the subdivisions of the City and County's Health Departments, such as Vital Statistics, Animal Control, and Vector Control, which are physically located elsewhere within the jurisdictional limits of Nueces County ("**Services**") as the alternate selected and paid by Dr. William Burgin, Jr. In the event that Dr. Simon provides specific program-related professional duties to the District's infectious diseases program or other clinical programs, Dr. Simon shall be paid separately in accordance with the relevant State or federal program grant.

Section 6. Emergency Operations Center. In the event of a weather, biological, or health emergency, or other public emergency, Dr. Simon additionally agrees to provide Services upon activation of operations by the Emergency Operations Center ("**EOC**"), which is located in the Frost Bank Building on Leopard Street, Corpus Christi, Texas. Dr. Simon shall report

to the EOC upon the request of the City or County EOC Director ("**Director**") and will remain on duty until released by the Director.

Section 7. Relationship of the Parties.

(A) Dr. Simon will perform all Services as an independent contractor and will furnish the Services in his/her own manner and method. Under no circumstances or conditions will Dr. Simon be considered an employee of the City or County or the District for any purpose or reason. Dr. Simon may only act as an agent of the Health District in the capacity of a medical director and local Alternate Health Authority under State law.

(B) Dr. Simon acknowledges that he/she is competent, capable, qualified, and duly licensed by the State of Texas to perform the Services specified under this Agreement. Dr. Simon, subject to the selection by Dr. Burgin and approval of and appointment by the City and County, shall serve as a designee of and for Dr. Burgin in the event of Dr. Burgin's absence, incapacitation, or inability to serve under the terms of Dr. Burgin's separate agreement with the Health District and Chapter 121 of the Texas Health and Safety Code. In compliance with Section 121.0451(4) of the Texas Health and Safety Code, Dr. Simon will file a certified copy of Dr. Burgin's written delegation with the ~~Texas Board of Health~~ State each time authority is transferred by Dr. Burgin to Dr. Simon due to Dr. Burgin's absence, incapacitation, or inability to serve.

Section 8. Fee/Compensation for Services.

(A) In the event that Dr. Burgin utilizes the services of Dr. Simon, as his alternate, for any portion of any day under the term of this Agreement, Dr. Burgin shall be responsible for compensating Dr. Simon as specified under the terms of Dr. Burgin's separate agreement with the Health District.

(B) Dr. Simon acknowledges and agrees that he/she is personally responsible for the payment of all federal, State, and local taxes and fees, of any nature whatsoever, accruing or that may derive from the receipt of compensation, by Dr. Simon, under this Agreement.

Section 9. Insurance Required.

(A) Before the performance required under this Agreement can begin, Dr. Simon shall deliver copies of all Certificates of Insurance ("**Certificates**") required by **Exhibit A**, which is attached to this Agreement and incorporated in this Agreement by reference, as proof that the required insurance coverage provisions of this Agreement have been satisfied. Copies of the Certificates must be submitted to the City's Risk Manager ("**Risk Manager**") and to the City Manager. Dr. Simon must maintain in good standing and keep in force all insurance coverages required under this Agreement for the term of this Agreement.

(B) The Certificates must state, in writing on the face of each document, that the Risk Manager shall be given at least 30 days written notice of cancellation, any material change, or intent not to renew any of the policies required under this Agreement, by certified mail. Additionally, the City of Corpus Christi and Nueces County must be named as separate **additional insureds** for liability arising from Dr. Simon's provision of Services under this Agreement.

(C) If the insurance company or companies utilized by Dr. Simon elects to use the standard ACORD form, the cancellation clause located on the bottom right of each ACORD form must be amended by adding the wording "materially changed or" between "be" and "canceled," deleting the words "endeavor to," and deleting the wording after "left." In lieu of modification of an ACORD form, separate endorsements addressing the same substantive requirements, as stated in this section and Exhibit A, are mandatory on the ACORD form.

(D) Dr. Simon must provide workers' compensation coverage through a licensed insurance company or through self-insurance obtained in accordance with Texas law.

Section 10. Indemnification. To the extent allowed by Texas law, Dr. Simon ("Indemnitor") will indemnify and hold harmless the City, the County, and their respective officers, employees, representatives, and agents ("Indemnitees") from and against any and all liability, damages, loss, claims, demands, suits, and causes of action of every nature whatsoever asserted against or recovered from the Indemnitees, or any of them individually, on account of personal injuries (including, without limitation on the foregoing, workers' compensation, premises defects, and death claims), property loss or damage, or any other kind of damage, including dishonest, fraudulent, negligent, or criminal acts of the Indemnitor or any of his/her employees, representatives, or agents, acting alone or in collusion with others, and including all expenses of litigation, court costs, and attorneys' fees which arise, or are claimed to arise, out of or in connection with the services provided by the Indemnitor pursuant to this Agreement, regardless of whether such injuries, death, or damages are caused or claimed to be caused by the concurrent or contributory negligence of the Indemnitees, or any of them individually. The Indemnitor covenants and agrees that, if the Indemnitees, or any of them individually, are made a party to any litigation against the Indemnitor or, in any litigation commenced by any party other than the Indemnitor, relating to this Agreement, the Indemnitor, shall, upon receipt of reasonable notice regarding the commencement of any litigation, at its own expense, investigate all claims and demands, attend to their settlement or other disposition, defend the Indemnitees collectively or each separately, in all actions based thereon with counsel satisfactory to the Indemnitees, and pay all charges of attorneys and all other costs and expenses of any kind arising from any said liability, damage, loss, demand, claim, or action.

Section 11. Nondiscrimination. Dr. Simon shall not discriminate nor permit discrimination against any person or group of persons, as to employment or in the performance of Services

under this Agreement, on the grounds of race, religion, national origin, sex, disability, or age, or in any manner prohibited by the laws of the United States or the State of Texas. The City and County each retains the right to take such action as the United States may direct to enforce this non-discrimination covenant.

Section 12. Compliance with Laws. Dr. Simon must comply with all applicable federal, State, and local government laws, rules, regulations, and ordinances, which may be applicable to the Services to be rendered under this Agreement and to his/her performance under this Agreement.

Section 13. Notices.

(A) All notices, demands, requests, or replies provided for or permitted, under this Agreement by either party must be in writing and must be delivered by one of the following methods: (1) by personal delivery; (2) by deposit with the United States Postal Service as certified mail, return receipt requested, postage prepaid; (3) by prepaid telegram; (4) by deposit with an overnight express delivery service, for which service has been prepaid; or, (5) by fax transmission.

(B) Notice deposited with the United States Postal Service in the manner described above will be deemed effective two (2) business days after deposit with the United States Postal Service. Notice by telegram or overnight express delivery service in the manner described above will be deemed effective one (1) business day after transmission to the telegraph company or overnight express carrier. Notice by fax will be deemed effective upon transmission with proof of delivery to the receiving party. All such communications must only be made to the following:

IF TO THE HEALTH DISTRICT:

City of Corpus Christi
Attn: City Manager
P. O. Box 9277
Corpus Christi, TX 78469-9277
(361) 826-3220 Office
(361) 826-3839 Fax

IF TO DR. SIMON:

Dr. Colette Simon
Physician's Plaza West
2601 Hospital Blvd., Suite 117
Corpus Christi, TX 78405
(361) 884-8200 Office
(361) 882-6649 Fax

With a copy to:

Nueces County
Attn: County Judge
901 Leopard St., Rm. 303
Corpus Christi, TX 78401
(361) 888-0444 Office
(361) 888-0445 Fax

(C) Either party may change the address to which notice is sent by using a method set out above in this section. Dr. Simon must notify the Health District of an address or phone number change within 10 days after the address or number is changed.

Section 14. Amendments. No alterations, changes, or modifications to the terms of this Agreement nor the waiver of any provision will be valid unless made in writing and signed by all parties to this Agreement by a person authorized to sign agreements on behalf of each party. With respect to the Health District, the parties authorized to sign are as stated in the parties' cooperative agreement.

Section 15. Waiver.

(A) The failure of any party to complain of any act or omission on the part of the other party, no matter how long the same may continue, will not be deemed a waiver by said party of any of its rights under this Agreement.

(B) No waiver of any covenant or condition or of the breach of any covenant or condition of this Agreement by any party at any time, express or implied, will be taken to constitute a waiver of any subsequent breach of the covenant or condition nor will justify or authorize the nonobservance on any other occasion of the same or any other covenant or condition of this Agreement.

(C) If any action by Dr. Simon requires the consent or approval of the Health District on one occasion, any consent or approval given on said occasion will not be deemed a consent or approval of the same or any other action at any other occasion.

(D) Any waiver or indulgence of Dr. Simon's default of any provision of this Agreement will not be considered an estoppel against the Health District. It is expressly understood that, if at any time Dr. Simon is in default of any of the conditions or covenants of this Agreement, the failure on the part of the Health District to promptly avail itself of any rights and remedies which the Health District may have will not be considered a waiver on the part of the Health District, but the Health District may at any time avail itself of said rights or remedies or elect to terminate this Agreement on account of said default.

(E) The rights and remedies in this section are cumulative and are in addition to any other rights and remedies provided by law.

Section 16. Budgetary Appropriations. Dr. Simon understands and acknowledges that the continuation of this Agreement after the close of any fiscal year of the City or County, which fiscal year ends on July 31 and September 30, respectively, of each year, is subject to sufficient appropriations and budget approval providing for or covering this Agreement as an expenditure in the City's and County's budgets. Neither the City nor the County represents to Dr. Simon that said budget item will be actually adopted, the determination as to appropriations and expenses being within the sole discretion of the City's and County's governing bodies at the time of adoption of their respective budgets. If revenue funds are not appropriated by the City and County for any individual fiscal year following the execution of this Agreement, the Health District reserves the right to terminate this Agreement without penalty.

Section 17. Force Majeure. No party to this Agreement will be liable for failures or delays in performance due to any cause beyond their control including, but not limited to, any failures or delays in performance caused by strikes, lock outs, fires, acts of God or the public enemy, common carrier, severe inclement weather, riots or interference by civil or military authorities. The rights and obligations of the parties will be temporarily suspended during this period to the extent performance is reasonably affected.

Section 18. Assignment and Transfer of Agreement. This Agreement may not be, in whole or in part, assigned or transferred, directly or indirectly, by Dr. Simon without the prior written consent of the Health District. Subject to the foregoing, this Agreement shall be binding upon the Health District and Dr. Simon and each of their respective successors and assigns.

Section 19. Termination of Agreement.

(A) This Agreement terminates upon the earlier of the following:

- (1) The termination date specified in a written notice sent to Dr. Simon from the Health District;
- (2) Lack of budgetary appropriations by the City or County, as specified in Section 16;
- (3) Expiration of the appointment of Dr. Burgin to act as the local Health Authority;
- (4) Expiration of the appointment of Dr. Simon to act as the local Alternate Health Authority;
- (5) Following written notice to the City and County by Dr. Burgin of the withdrawal of Dr. Burgin's consent to have Dr. Simon serve as Dr. Burgin's designee, on behalf of the Health District, pursuant to Chapter 121 of the Texas Health and Safety Code;
or
- (6) By mutual consent of the parties to this Agreement.

(B) In the event of a termination of this Agreement, any unpaid compensation due by the Health District to Dr. Simon for Services performed up to the effective date of termination will be paid to Dr. Simon within 10 days of the effective termination date.

(C) The parties acknowledge and agree that this Agreement may be terminated with or without cause.

(D) In the event of the expiration of the appointment of Dr. Burgin under the provisions of (A)(3) above and the expiration of the appointment of Dr. Simon under the provisions of (A)(4) above, should Dr. Burgin continue to serve the District in a holdover capacity and Dr. Simon agrees to serve likewise as the local Alternate Health Authority, this Agreement shall continue only until Dr. Burgin has been duly reappointed (at which time, if Dr. Burgin desires, a new agreement with Dr. Simon will be executed and in place) or until another individual has been appointed as the Health Authority by the members of the District. It is the express intent of the parties that the terms of this Agreement shall survive during any holdover period, absent notice of termination under the provisions of (A)(1) above or the withdrawal of consent under the provisions of (A)(5) above.

Section 20. Venue and Jurisdiction.

(A) All actions brought to enforce compliance will be brought in Nueces County, where this Agreement was executed and will be performed.

(B) This Agreement will be governed by and construed in accordance with the laws of the State of Texas.

Section 21. Severability.

(A) If, for any reason, any section, paragraph, subdivision, clause, provision, phrase, or word of this Agreement or the application hereof to any person or circumstance is, to any extent, held illegal, invalid, or unenforceable under present or future law or by a final judgment of a court of competent jurisdiction, then the remainder of this Agreement, or the application of said term or provision to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be affected thereby, for it is the definite intent of the parties to this Agreement that every section, paragraph, subdivision, clause, provision, phrase, or word hereof be given full force and effect for its purpose.

(B) To the extent that any clause or provision is held illegal, invalid, or unenforceable under present or future law effective during the term of this Agreement, then the remainder of this Agreement is not affected thereby, and in lieu of each such illegal, invalid, or unenforceable clause or provision, a clause or provision, as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable, will be added to this Agreement automatically.

Section 22. Disclosure of Interest. In compliance with Section 2-349 of the City's Code of Ordinances, Dr. Simon agrees to complete the City's *Disclosure of Interests* form, which is attached to this Agreement as **Exhibit B**, the contents of which are incorporated in this document by reference as if fully set out in this Agreement. Dr. Simon shall also be responsible for completing any disclosure forms required by the County relating to this Agreement.

Section 23. Entirety Clause. This Agreement and the attached and incorporated exhibits constitute the entire agreement between the parties for the purposes stated. All other agreements, promises, representations, and understandings, oral or otherwise, with reference to the subject matter hereof, unless contained in this Agreement, are expressly revoked, as the parties intend to provide for a complete understanding within the provisions of this Agreement and its exhibits of the terms, conditions, promises, and covenants relating to Dr. Simon's performance hereunder.

(EXECUTION PAGES FOLLOW)

EXECUTED IN TRIPLICATE, each of which will be considered an original, on this the _____ day of _____, 2012.

ATTEST:

CITY OF CORPUS CHRISTI

Armando Chapa
City Secretary

Ronald L. Olson
City Manager

APPROVED AS TO FORM ONLY: 4/18/, 2012

Elizabeth R. Hundley
Elizabeth R. Hundley
Assistant City Attorney
for the City Attorney

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on the _____ day of _____, 2012, by Ronald L. Olson, City Manager of the City of Corpus Christi, Texas, a home-rule municipal corporation, on behalf of the corporation.

(seal)

Notary Public, State of Texas

ATTEST:

NUECES COUNTY

Diana Barrera
County Clerk

Samuel L. Neal, Jr.
County Judge

APPROVED AS TO FORM ONLY: _____, 2012

Laura Garza Jimenez
County Attorney

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on the _____ day of _____, 2012, by Samuel L. Neal, Jr. County Judge of Nueces County, Texas, a political subdivision of the State of Texas, on behalf of the county.

Dr. Colette Simon, in her individual capacity

Colette Simon, MD
Signature

Colette Simon, MD
Printed Name

M 1350
Texas Medical License Number

2/10/12
Date

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on the 10th day of February, 2012, by Dr. Colette Simon.

Dina L. Chavez
Notary Public, State of Texas

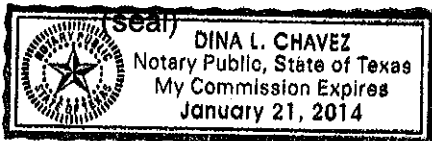


EXHIBIT A
INSURANCE REQUIREMENTS

I. CONTRACTED PHYSICIAN'S LIABILITY INSURANCE

- A. Contracted Physician must not commence work under this agreement until all insurance required has been obtained and such insurance has been approved by the City of Corpus Christi. Contracted Physician must not allow any subcontractor to commence work until all similar insurance required of the subcontractor has been so obtained.
- B. Contracted Physician must furnish to the City of Corpus Christi's Risk Manager, a Certificate of Insurance with applicable policy endorsements showing the following minimum coverage by insurance company(s) acceptable to the Risk Manager. The City of Corpus Christi and Nueces County must be named as additional insureds for all liability policies, and a blanket waiver of subrogation is required on all applicable policies.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-Day written notice of cancellation, material change, non-renewal or termination and a 10 day written notice of cancellation for non-payment of premiums is required on all certificates or by policy endorsement	Bodily Injury and Property Damage Per occurrence - aggregate
AUTOMOBILE LIABILITY--OWNED NON-OWNED OR RENTED	At a minimum, \$30,000/\$60,000 for Bodily Injury and \$30,000 for property damage
PROFESSIONAL LIABILITY to include 1. Medical Malpractice	\$200,000 per occurrence / \$600,000 aggregate
Accidental Injury - Health Coverage	In lieu of Workers Compensation requirement

- C. In the event of accidents of any kind, Contracted Physician must furnish the Risk Manager with copies of all reports of any accident within ten (10) days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. Certificate of Insurance or by applicable policy endorsements:

Contracted Physician agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

The City of Corpus Christi and Nueces County must be named as **additional insureds** on the liability coverage and a blanket waiver of subrogation is required on all applicable policies.

The name of the project must be listed under "Description of Operations"

At a minimum, a 30-day written notice of cancellation, material change, non-renewal, termination and a 10 day written notice of cancellation for non-payment of premium is required.



SUPPLIER NUMBER _____
TO BE ASSIGNED BY CITY
PURCHASING DIVISION

EXHIBIT B

CITY OF CORPUS CHRISTI

DISCLOSURE OF INTEREST

City of Corpus Christi Ordinance 17112, as amended, requires all persons or firms seeking to do business with the City to provide the following information. Every question must be answered. If the question is not applicable, answer with "NA". See reverse side for Filing Requirements, Certification and definitions.

COMPANY NAME: Collette Simon, M.D.

P. O. Box: 2601 Hospital Blvd, Ste. 117

STREET ADDRESS: _____ CITY: Corpus Christi ZIP: 78405

FIRM IS: 1. Corporation 2. Partnership 3. Sole Owner
4. Association 5. Other Self

If additional space is necessary, please use the reverse side of this page or attach separate sheet.

1. State the names of each "employee" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Job Title and City Department (if known)
<u>NA</u>	<u>NA</u>
_____	_____
_____	_____

2. State the names of each "official" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Title
<u>N/A</u>	_____
_____	_____
_____	_____

3. State the names of each "board member" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Board, Commission or Committee
<u>N/A</u>	_____
_____	_____
_____	_____

4. State the names of each employee or officer of a "consultant" for the City of Corpus Christi who worked on any matter related to the subject of this contract and has an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Consultant
<u>N/A</u>	_____
_____	_____
_____	_____

FILING REQUIREMENTS

If a person who request official action on a matter knows that the requested action will confer an economic benefit on any City official or employee that is distinguishable from the effect that the action will have on members of the public in general or a substantial segment thereof, you shall disclose that fact in a signed writing to the City official, employee or body that has been requested to act in the matter, unless the interest of the City official or employee in the matter is apparent. The disclosure shall also be made in a signed writing filed with the City Secretary. [Ethics Ordinance Section 2-349(d)]

CERTIFICATION

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the City of Corpus Christi, Texas as changes occur.

Certifying Person: Colette Simon, MD Title: MD

Signature of
Certifying Person: [Signature] Date: 3/7/12

DEFINITIONS

- a. "Board member." A member of any board, commission, or committee appointed by the City Council of the City of Corpus Christi, Texas.
- b. "Economic benefit." An action that is likely to affect an economic interest if it is likely to have an effect on that interest that is distinguishable from its effect on members of the public in general or a substantial segment thereof.
- c. "Employee." Any person employed by the City of Corpus Christi, Texas either on a full or part-time basis, but not as an independent contractor.
- d. "Firm." Any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as non-profit organizations.
- e. "Official." The Mayor, members of the City Council, City Manager, Deputy City Manager, Assistant City Managers, Department and Division Heads, and Municipal Court Judges of the City of Corpus Christi, Texas.
- f. "Ownership Interest." Legal or equitable interest, whether actually or constructively held, in a firm, including when such interest is held through an agent, trust, estate, or holding entity. "Constructively held" refers to holdings or control established through voting trusts, proxies, or special terms of venture or partnership agreements."
- g. "Consultant." Any person or firm, such as engineers and architects, hired by the City of Corpus Christi for the purpose of professional consultation and recommendation.