

CS-20-128

(Contract Management Use only)

CONTRACT APPROVAL FORM

CONTRACT TRACKING NO.
CM2964

CONTRACTOR INFORMATION

Name: Healthy Outcomes, Inc. (dba BalancingAct)

Address: 1700 Lincoln St., 17th Floor, Denver, CO 80203
City State Zip

Contractor's Administrator Name: Peter Dieterich Title: Director of Sales

Tel#: (225) 772-4332 Fax: _____ Email: peter@abalancingact.com

CONTRACT INFORMATION

Contract Name: BalancingAct and Tax Receipt Contract Value: \$5,200/yr x5 yrs

Brief Description: Interactive tools for residents to better understand the County's budget and how their tax dollars are spent.

Contract Dates : From: 1/2021 to: 12/31/2026 Status: New Renew Amend# WA/Task Order

How Procured: Sole Source Single Source ITB RFP RFQ Coop. Other _____

If Processing an Amendment:

Contract #: _____ Increase Amount of Existing Contract: _____

New Contract Dates: _____ to _____ TOTAL OR AMENDMENT AMOUNT: _____

APPROVALS PURSUANT TO NASSAU COUNTY PURCHASING POLICY, SECTION 6

1.  _____ Date 1/12/21
Department Head Signature
J. Brian Simmons Digitally signed by J. Brian Simmons
Date: 2021.01.11 15:10:16 -05'00'
2. _____ Date _____
Procurement
3.  _____ Date 1/12/21
Office of Management & Budget
4.  _____ Date 1/13/21
County Attorney/Contract Management

OMB
Submitting Department
01135513-552646
Funding Source/Acct #

Comments: _____

COUNTY MANAGER – FINAL SIGNATURE APPROVAL

 _____ Date 1/20/21
Taco E. Pope, AICP

RETURN ORIGINAL(S) TO CONTRACT MANAGEMENT FOR DISTRIBUTION AS FOLLOWS:

- Original: Clerk's Services; Contractor (original or certified copy)
- Copy: Department
- Procurement
- Office of Management & Budget
- County Attorney/Contract Management
- Clerk Finance

Nassau County Board of County Commissioners
Sole Source/Single Source Certification Form

Vendor Name: Healthy Outcomes, Inc. Department: OMB
Address: 1700 Lincoln St., 17th Flr
Denver, CO 80203
Phone: 225-772-4332 Date: 12/28/2020
Contact Name: BalancingAct w/ Tax Rec
Account: 01135513-552646 Cost: \$ 5,200.00 per year

Description of Goods and/or Service:

BalancingAct is an interactive tool for residents to better understand the County's budget and how tax dollars are spent, and includes the ability for a resident to see what portion of their taxes go to fund various public services provided by the County.

Check one (1) of the following two (2) choices:

- Sole Source: The goods or services can be legally purchased from only one source.
- Single Source: The goods or services can be purchased from multiple sources, but, in order to meet certain functional or performance requirements, there is only one economically feasible source for this purchase.

Please check all of the following that apply:

- Purchase can only be obtained from original manufacturer-not available through distributors.
- Only authorized area distributor of the original manufacturer.
- Parts/Equipment are not interchangeable with similar parts of another manufacturer.
- This is the only known source that will meet the specialized needs of this department or perform the intended function.
- This source must be used to meet warranty or service maintenance requirements.
- This source is required for standardization.
- None of the above apply.

Comments/Explanations: (required)

BalancingAct is a proprietary software that allows residents to run their own budget simulations, provide feedback to the County, learn what each budget line corresponds to and what services are covered in those items, and understand the impacts of budget changes.

Department Head

I certify that, to the best of my knowledge, this requisition reflects accurate information, has been reviewed, budgeted for and follows the Nassau County Purchasing Policy.

 _____ 1/12/21

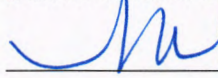
Procurement Manager

I certify that I have reviewed this request and concur that it is a Sole or Single Source and is consistent with the Nassau County Purchasing Policy.

J. Brian Simmons Digitally signed by J. Brian Simmons
Date: 2021.01.11 15:11:37 -05'00'

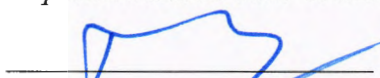
Office of Management and Budget

I certify that, to the best of my knowledge, funds are available for payment and this purchase is consistent with the Nassau County Purchasing Policy.

 _____ 1/12/21

County Manager

I certify that, to the best of my knowledge, the appropriate staff have reviewed and approved this Requisition and no other conditions would prevent approval.

 _____ 1/20/21

SUBSCRIPTION AND SUPPORT AGREEMENT
FOR
NASSAU COUNTY, FL

This Subscription and Support Agreement (the "Agreement") is hereby entered into with an effective date of December 18, 2020 (the "Effective Date") by and between County of Nassau, FL and Healthy Outcomes, Inc., DBA Balancing Act, ("Balancing Act"), located at 1700 Lincoln St, 17th Floor, Denver, CO, 80203 ("Balancing Act"). Client and Balancing Act are collectively referred to as "the Parties" and individually referred to as "Party."

WHEREAS, Balancing Act is in the business of developing web software and sites capable of hosting public policy simulations and related projects promoting an exchange of information and ideas for use by governmental and other entities;

WHEREAS, Client desires to subscribe to access Balancing Act's proprietary web application known as Balancing Act to be used for public education and engagement, and

NOW, THEREFORE, in consideration of the foregoing recitals and mutual covenants contained herein, the parties agree as follows:

1. SCOPE OF ENGAGEMENT.

- A. Subscription Agreement. Balancing Act shall provide Client with access to the Balancing Act platform and agrees to provide all of the technical, administrative, and professional support services necessary to perform this Agreement. Client is granted a non-exclusive, non-transferable, and revocable license to access and use the Balancing Act website. Client shall have the right to test and approve the application prior to it going live.
- B. Support Services. Balancing Act shall perform and provide certain support services to Client in accordance with the terms and conditions of this Agreement and the SOW (the Services described under "Support Services", the "Support Services"). If Client hereafter requests additional services not described on Exhibit A ("Additional Services"), and Balancing Act is willing and able to provide those Additional Services, the parties shall mutually agree upon and execute one or more additional SOWs that contain the terms and conditions of the Additional Services to be performed. Each such SOW shall be attached to and incorporated into this Agreement as an Exhibit. Except as otherwise provided, any Additional Services to be performed by Balancing Act shall be subject to the terms of this Agreement.

- C. Fees. Client shall pay Balancing Act pursuant to the Fee Schedule selected by Client and attached hereto as Exhibit "B."

2. FEE PAYMENT AND TIMING.

- A. Fees. In consideration of Balancing Act's granting of access to the Site and performance of the Services, hereunder, Client shall pay fees in accordance with the payment terms and conditions specified in this Agreement and on Exhibit B attached hereto (collectively, the "Fees").
- B. Late Payment. Except with respect to amounts disputed in good faith, all amounts due under this Agreement, if not paid within 45 days of the due date, shall be considered late. Should collection activities become necessary, Client agrees to pay all fees relating to said activity.
- C. Client's Failure to Pay. Client's incurring of a late payment (as determined in accordance with Section 2(B)) shall be considered a material breach of this Agreement. As such, until such breach is cured by way of full payment, Balancing Act may (i) refuse to deliver the reports, materials, and other deliverables that it would otherwise be obligated to deliver hereunder, (ii) cease performance of any Services, (iii) issue a notice of non-payment to Client, which, if not satisfied within 15 days after the receipt thereof, shall constitute grounds for Balancing Act to terminate this Agreement or the SOW applicable to the Services. These rights are not exclusive and Balancing Act reserves its right to seek any other rights or remedies provided in law or equity.
- D. Taxes. All amounts payable to Balancing Act as specified herein are in US dollars. Client shall be responsible for any taxes imposed on the transactions contemplated by this Agreement, including all sales, use, value-added, excise and other similar taxes (but specifically excluding taxes in, or measured by, Balancing Act's income), provided such amounts were previously disclosed in writing to the Client.

3. CLIENT OBLIGATIONS.

Client shall be responsible for the accuracy of all data utilized by Balancing Act under this Agreement and shall comply with all laws and governmental regulations affecting its use, including all open and public records laws. Balancing Act shall have no responsibility to advise Client about the applicability of any laws or regulations that may apply to this Agreement.

4. SERVICE LEVEL AGREEMENT

A. Support Services.

- (i) Balancing Act's web platform will be operational and available to Client at least 99.5% of the time in any calendar month (the "Balancing Act Application SLA"). If Balancing Act does not meet the Balancing Act Application SLA, Client will be eligible to receive the Support Service Credits described below:

Uptime Percentage	Support Service Credit (Days)
< 99.5% - >= 99.0%	3
< 99.0% - >= 95.0%	7
< 95.0%	15

- (ii) **Service Credit Request.** In order to receive any of the Support Service Credits described above, Client must notify Balancing Act within 30 days from the time Client becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Client's right to receive a Service Credit.
- (iii) **Maximum Service Credit.** The aggregate maximum number of Support Service Credits to be issued by Balancing Act to Client for all Downtime that occurs in a single calendar month shall not exceed fifteen days of Service added to the end of Client's term for the Service. Support Service Credits may not be exchanged for, or converted to, monetary amounts.
- (iv) **Application SLA Exclusions.** The Balancing Act Application SLA does not apply to any services that expressly exclude this Balancing Act Application SLA or any performance issues: (i) Caused by factors described in the "Force Majeure" section of the Agreement; or (ii) that resulted from Client's equipment or third party equipment, or both (not within the primary control of Balancing Act).

5. TERM

- A. Term. This Agreement shall commence on the Effective Date and be effective for five years. This Agreement shall thereafter be automatically extended without further action from either Party on a yearly basis after the Initial Term.
- B. Termination: Notwithstanding anything contained herein, either party can terminate this agreement, without cause, by providing at least 30 days written notice to the

other party. As Client is receiving discounted pricing based on a five-year term, should Client terminate prior to the end of the term, Client will immediately make a prorated additional payment for each year or partial year the contract was in effect, equal to the difference between the discounted and non-discounted fee (discount of \$2,800 per year), and an early termination fee equal to 10% of the non-discounted annual fee, or \$800. Total penalty not to exceed \$14,800.

6. OWNERSHIP AND USE OF THE MATERIALS, USER CONTENT.

- A. **Creative Materials.** The Parties acknowledge and agree that an integral part of the services is the creation of the Balancing Act application for Client, which includes the development of certain information, content, text, graphics, logos, photos, videos, software and other items, as well as their selection and arrangement ("Creative Materials"). Such Creative Materials are protected by copyrights, trademarks, patents, trade secrets and other intellectual property and proprietary rights, and Balancing Act shall be considered the author of such Creative Materials and retains all right, title and interest in and to such Creative Materials. Client's rights to use the Creative Materials are limited to use solely in connection with this Agreement, and the rights and obligations granted hereunder. Client shall have license to continue to use Creative Materials previously published in any collateral materials then existing at the time this Agreement is terminated but shall not have license to include said Creative Materials in any new documents, publications, or presentations.
- B. **User Content.** The Parties acknowledge and agree that the user content generated on the Balancing Act website by others who are not parties to this Agreement is not owned by either Balancing Act or Client but can be used by either Party for promotional purposes or any other purpose during and after the term of this Agreement. Balancing Act acknowledges that the Client can and will retain the right to use any user content and the deliverables under this Agreement for any and all purposes related to the general business of the Client.

7. LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTIES AND LIABILITY FOR ACTIONS OF THIRD PARTIES.

- A. Other than the obligations under this Agreement, neither Party shall be liable to the other Party under this Agreement for any indirect, incidental, special, punitive or consequential damages for any claim, whether in contract, tort or otherwise. In no event will the total aggregate liability against a Party for any claims, losses or damages arising out of this Agreement exceed the total amount of fees and other consideration actually paid under this Agreement.

- B. Except for the terms and conditions set forth in this Agreement, Balancing Act makes no express or implied warranties about the performance of Balancing Act, including warranties of merchantability or fitness for a particular purpose.
 - C. Neither party shall be liable for false or defamatory statements, either orally or in writing, made by others who are not parties to this Agreement.
8. **ASSIGNMENT.** Either Party may assign all or a portion of its rights or obligations under this Agreement but only with the express written consent of the other Party.
9. **CONFIDENTIALITY.** During the term of this Agreement, each party (the "Disclosing Party") may provide the other (the "Receiving Party") with certain confidential and proprietary information ("Confidential Information"). Confidential Information includes, but is not limited to, (a) the Deliverables under this Agreement, (b) all business, financial and technical trade secrets, (c) any written information which is marked "Confidential", and (d) any information which is orally disclosed, identified as confidential at the time of disclosure and confirmed in writing as being confidential within 30 days thereafter. Confidential Information shall not include information that (a) is publicly known at the time of its disclosure; (b) is lawfully received by the Receiving Party from a third party not under an obligation of confidentiality to the Disclosing Party, or (c) is published or otherwise made known to the public by the Disclosing Party. The Receiving Party will refrain from using the Disclosing Party's Confidential Information except to the extent necessary to exercise its rights or perform its obligations under this Agreement. Except as required by Florida law, the Receiving Party may not disclose the Disclosing Party's Confidential Information to any third party, other than its affiliates or representatives who have an absolute need to know such Confidential Information in order for the Receiving Party to perform its obligations and enjoy its rights under this Agreement, and only if such persons are informed of and are subject to the provisions of this Agreement. The Receiving Party remains liable for any unauthorized use or disclosure of the Confidential Information by any such representative or affiliate.
10. **WEB SOFTWARE AND SITE TERMS OF USE AND PRIVACY POLICY.** Balancing Act shall include on the Balancing Act website its privacy policy ("Privacy Policy") that applies to the activities of Balancing Act and the users of Balancing Act, including the use of users' personal information. Client represents that it has read and is familiar with the Privacy Policy and, to the extent applicable, shall govern itself in accordance therewith.
11. **INDEPENDENT CONTRACTOR.** Client and Balancing Act intend at all times to be independent contractors. Neither party is an employee, joint venture, agent or partner of the other, nor is either party authorized to assume or create any obligations or liabilities,

express or implied, on behalf of or in the name of the other. The employees, methods, facilities and equipment of each Party shall at all times be under the exclusive direction and control of that Party.

12. **GOVERNING LAW AND VENUE. GOVERNING LAW AND VENUE.** This agreement shall be construed in accordance with and governed by the laws of the State of Florida and any claim or lawsuit brought to enforce the terms of this Agreement shall be brought in the appropriate federal or state court serving Nassau County, FL.

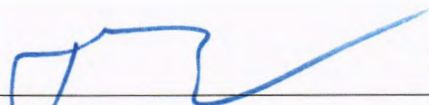
13. **FULL AUTHORITY.** The person agreeing to the terms and conditions of this Agreement states and affirms that they have the full authority of Client to enter into and execute this Agreement.

[Remainder of This Page Intentionally Left Blank; Signature Page Follows.]

IN WITNESS WHEREOF, CLIENT and BALANCING ACT have executed this Agreement as of the Effective Date.

CLIENT:

Nassau County Board of County Commissioners
96135 Nassau Place, Suite 1
Yulee, Florida 32097


Signature 1/20/21 Date
Taco E. Pope, AICP, County Manager, as its Designee
Printed Name / Title

Engaged Public:

1700 Lincoln Street, 17th Floor
Denver, CO, 80203

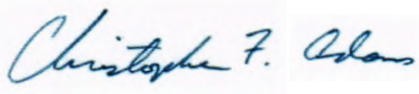

Signature 1/20/21 Date
Chris Adams, President
Printed Name / Title

EXHIBIT A
SUBSCRIPTION AND SUPPORT

**FOR SUBSCRIPTION AND SUPPORT AGREEMENT BETWEEN BALANCING ACT
AND County of Nassau, FL WITH AND EFFECTIVE DATE OF December 18, 2020.**

1. **Time of Performance**
 - A. The full version of the control panel shall be available upon execution of this contract.

2. **SUPPORT SERVICES**
 - A. Balancing Act staff will provide up to 3 training sessions via web conference for client staff. The training session will cover the following items:
 - i) Setting up site, general orientation, strategic advice
 - ii) Unlimited technical support and help understanding how to use features

3. **SUBSCRIPTION AGREEMENT**
 - A. Design and Launch of the Site (s)
 - i) Client will have access to design and launch Site (s) beginning on the effective date of the agreement.

 - B. Live Site (s)
 - i) The Site (s) shall include all aspects of the Balancing Act Program, including category manager, Analytics, Custom Questions, Meeting Mode, for 10 published budgets.
 - ii) The site shall include the integrated Taxpayer Receipt module.
 - iii) Client is responsible for selecting and uploading categories, sub-categories, supporting information, additional details and all financial analysis and costing of budget items.
 - iv) Client is solely responsible for the time and cost associated with content creation and inputting.

4. **SUPPORT SERVICES**

A. Administration and Site Support

- i) Balancing Act will provide up to two (2) hours per live site each month of Site administration, maintenance and support, including Client and user support during the Term. Support Services include, but may not be limited to the following:
 - General user support (password reset, site navigation issues, site utilization questions, assistance with new features etc.)
- ii) Any Support Services requested by Client other than Site administration, maintenance and support will be considered additional work and billed to client in accordance with Exhibit B.

EXHIBIT B

FEES

FOR SUBSCRIPTION AND SUPPORT AGREEMENT BETWEEN BALANCING ACT AND Nassau County, FL WITH AND EFFECTIVE DATE OF December 18, 2020

The following is a summary of the Fees associated with the Services provided by Balancing Act hereunder.

1. Fee

- a. Subscription fee is \$5,200.00 per year, based on a five-year contract, for a total five-year cost of \$26,000.00.

2. Payment Schedule

- a. Invoice for the yearly licensing fee will be sent on approximately December 18, 2020, and on approximately October 18 every year thereafter for the duration of this Agreement. Should any additional services be requested, agreed upon, and performed, invoice will be sent within 45 days of delivery and due within 45 days of receipt.

3. General

- a. Except as otherwise provided herein or in an applicable SOW, all Fees due to Balancing Act will be payable within 45 days of receipt of the applicable invoice.
- b. All payments of the Fees must be made by cash or cash equivalent to Balancing Act at 1700 Lincoln St, 17th Floor, Denver, CO, 80203. ACH is acceptable.
- c. This Agreement shall thereafter be automatically extended without further action from either Party on a yearly basis after the Initial Term, for a maximum of five (5) renewal years, for a total contract length not to exceed ten (10) years. After initial term, rate subject to increase at 3% for each additional year.