

Consulting Agreement

This Consulting Agreement, hereinafter referred to as "Agreement" is between Sylvan Union School District, hereinafter referred to as "Client" and Burnham Benefits Insurance Services, hereinafter referred to as "Consultant."

WHEREAS, Client wishes to obtain the assistance of Consultant with strategic benefit planning, design, funding, administration, and communication with respect to its employee benefit programs;

WHEREAS, Consultant has superior knowledge and expertise in assisting employers with designing and servicing employee benefit plans; and

WHEREAS, the parties wish to set forth their respective expectations;

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the parties hereby agree as follows:

1. Scope of Services to be Provided by Consultant

- a. Analysis, recommendation, marketing, negotiation and placement of insurance
 - Analyze existing coverage and identify or develop cost-saving alternative benefit strategies and plans.
 - Review and make cost-saving recommendations regarding the modification of plan design, benefit levels, premiums, communications and quality of current employee and retiree benefit
 - Review rate proposals to ensure underlying assumptions are appropriate and accurate to Client.
 - Maintain full and accurate records with respect to all matters and services provided on behalf of Client's benefit plans and programs. Provide Client staff or officials all spreadsheets, assumptions and calculations upon completion of any project performed on behalf of Client's benefit plans and programs.
 - Make recommendations for items of negotiation with providers, including, but not limited to, benefit levels and plan design, premiums, quality of service, performance measures and guarantees, and return on investment, where applicable.
 - Prepare specifications and compile data, obtain quotes and proposals, negotiate rates and analyze and compare proposals.

- b. Compliance, communications and administrative support
 - Provide guidance and recommendations on items such as, but not limited to, trends in benefits plans, methods for improving cost containment, financial arrangements and administration.
 - Assist with ongoing plan administration and ensure that programs are in compliance with State and Federal legislation.
 - Provide on-site training to Client staff, as needed, regarding regulatory updates and/or Best Practice seminars for the effective administration of benefits plan.

- Review and disseminate information to staff on new or revised State and Federal legislation that impacts benefits programs.
- Assist Client staff with annual audit to ensure compliance with all mandated reporting and posting/notice requirements for benefit plans.
- Develop and/or assist in developing communication materials and tools for conducting dependent verification audits.
- Review vendor contracts, evidence of insurance
- Provide timely research and responses to technical questions posed by Client staff.
- Assist with the presentation content for labor and management benefits meetings and/or Client Board meetings.
- Develop additional benefits communications specific to the needs of Client's employees and retirees.
- Review and evaluate current administrative processes related to enrollment and billing. Recommend and assist with implementation of administrative process enhancements.
- Act as liaison and advocate between Client and insurance providers

c. Support Open Enrollment activities

- Provide communication development and support for the annual open enrollment period, new benefit offerings and/or changes to the existing benefits offerings.
- Attendance at, and assistance with, coordination of the annual Benefits Fair and Open Enrollment meetings.

2. Disclosure and Record Keeping

- A. **Full Disclosure.** Client has the right to approve any arrangements and/or the utilization of any intermediaries in connection with, or arising out of, or in any way related to Client's insurance and risk management program. Consultant must seek approval from Client prior to the use of any of the above in connection with the Client's insurance and risk management program.
- B. **Record Keeping.** Consultant will maintain accurate and current files including, but not limited to, insurance policies and correspondence with insurers or brokers in accordance with industry standard record retention practice or as otherwise directed by Client.

3. Term & Termination

- A. **Term.** This initial term of this Agreement shall be two (2) years, commencing on July 1, 2020 and ending June 30, 2022 ("Initial Term"). These terms provide services for the benefit plan year commencing January 1, 2021 and January 1, 2022, respectively. Thereafter, this Agreement may be renewed by mutual written agreement for an optional three (3) year term until terminated as described below.

B. **Termination.** This Agreement may be terminated by either party only as follows:

- a) Effective upon ninety (90) days advance written notice to the other party stating that such other party is in breach of any of the provisions of this Agreement, provided such breach (if able to be cured) is not cured within thirty (30) days after the notice is received;
- b) By mutual written agreement of the parties.

4. **Cost of Services**

Consultant professional fees are to be paid through the current employee benefits vendors (medical, dental, vision, etc.) providing services to Client. Client agrees to total compensation as outlined in Exhibit 1, attached hereto and incorporated by reference. Any shortfall of total commissions will be made whole by the client (by either self-funded plan funds or direct invoicing to Client) within 45 days of the contract anniversary. Conversely, any over collection of commissions by Consultant will be returned to Client within 45 days of the close of the contract period.

Cost of Services will remain fixed for the initial two (2) year term as well as the 1st year of the subsequent optional three (3) year term, increasing to \$100,000 for years 4 and 5.

Additional programs and services will be provided on a project basis for an additional fee to be disclosed in writing and shall be undertaken upon mutual written agreement between Consultant and Client. Such programs and services may include, but not be limited to, special employee surveys, employee communication materials, and additional voluntary benefit programs (beyond those already in place as of the start of this contract).

5. **Personnel**

Consultant will assign its personnel according to the needs of Client and according to the disciplines required to complete the appointed task in a professional manner. Consultant retains the right to substitute personnel with reasonable cause. The Account Management Team consists of the following individuals:

Primary Service Team:

Tina Koenig, Vice President
Sara Corp, Senior Account Manager

6. **Client's Responsibilities**

Client agrees to provide Consultant with the necessary data and records that Consultant requires in order to perform the services Consultant agrees to perform under the terms of this Agreement. Such data and records include, but are not limited to, written plan materials, contracts, policies, notices, enrollment data, disenrollment data, and census data. The data and records will be provided as of the Effective Date and will be updated promptly and timely as necessary throughout the term of this Agreement. Consultant's ability to provide Client with the services provided for in this Agreement is conditioned upon Consultant's receipt of accurate and timely information from Client. Consultant will not independently verify or authenticate information provided by or on behalf of Client. Client shall be solely responsible for the accuracy and completeness of such information and other documentation furnished to Consultant.

Client agrees to notify Consultant as soon as possible of any proposed amendments to the plans' legal documents to the extent that the amendments would affect Consultant in the performance of its obligations under this Agreement.

7. Records and Protected Health Information

All sensitive information is agreed to be handled in a manner consistent with State of California and Federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") guidelines. Furthermore, Consultant understands and agrees to limit its use and disclosure of protected health information, as such term is defined under HIPAA, and a separate Business Associate Agreement will be executed to this end to the extent applicable.

8. Independent Contractor

It is understood and agreed that Consultant is engaged by Client to perform services under this Agreement as an independent contractor. Consultant shall use reasonable efforts to follow written, oral, or electronically transmitted (i.e., sent via facsimile or e-mail) instructions from Client as to policy and procedure.

In the performance of the terms of this agreement, Contractor agrees that he/she will not engage in, nor permit, such subcontractors, where applicable, as he/she may employ, from engaging in discrimination in employment or persons because of race, color, religion, national origin or ancestry, age, sex, familial status, sexual orientation or disability of such persons.

No assignment by Consultant of a resultant agreement, or any part thereof, or of funds to be received therefrom, will be recognized by the Client unless such assignment has had prior written approval and consent of Client. The Client is specifically contracting for the services of the individuals in the Consultant firm and the qualifications of those individuals.

9. Fiduciary Responsibility

Client acknowledges that:

- A. Consultant shall have no discretionary authority or discretionary control respecting the management of any of the employee benefit plans;
- B. Consultant shall exercise no authority or control with respect to management or disposition of the assets of Client's employee benefit plans; and
- C. Consultant shall perform services pursuant to this Agreement in a non-fiduciary capacity.

Consultant is solely an insurance broker and consultant, and has no discretionary control over plan assets; thus, in the event Client's employee welfare benefit plan or plans are deemed to be governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), Client, and not Consultant, shall be and is the ERISA fiduciary for the plan or plans.

10. Legal Compliance

Consultant is not licensed to practice law and the services provided under the terms of this

Agreement are not intended as a substitute for legal advice. Client, and not Consultant, shall be solely responsible for complying with, and consulting with legal counsel with respect to, its legal obligations under the terms of this Agreement, as well as Client's compliance obligations under federal and state insurance, employee benefits, privacy, and labor laws and regulations (including, but not limited to, HIPAA, COBRA, and the Internal Revenue Code). Client is also solely responsible for determining, and consulting with legal counsel with respect to, the legal sufficiency of written documents relating to Client's employee welfare benefit plans, including but not limited to plan documents, summary plan descriptions, insurance policies and contracts, notices, and communications materials, including those that may be provided by Consultant. The responsibilities of Client include, but are not limited to, meeting its reporting and disclosure obligations, conducting any discrimination testing that may be required under the Internal Revenue Code for its plans, and complying with federal and state privacy laws (including HIPAA). Client should consult legal counsel before entering into any insurance policies, contracts, or vendor arrangements.

Consultant shall maintain in effect all licenses it is required by California law to maintain in order to perform its obligations under this Agreement.

Consultant must affirmatively agree and certify that it will comply with all applicable federal, state, and local laws and regulations, including but not limited to the provisions of the Fair Employment and Housing Act (Govt. Code, § 12900 et seq.) and any applicable regulations promulgated there under (Cal. Code of Regs., tit. 2, § 72850.0 et seq.). Consultant must affirmatively agree to include the non-discrimination and compliance provisions of this clause in any and all subcontracts to perform work under the agreement.

11. Confidentiality

Each party (in such capacity, "Recipient") will not access or use Confidential Information of the other (in such capacity, "Discloser") for any purpose other than performance of its obligations or receipt of benefits hereunder and shall maintain such information in the strictest confidence. Recipient may disclose the Discloser's Confidential Information to Recipient's employees, attorneys, advisors, and contractors who have a legitimate "need to know", provided that Recipient ensures that all such entities and persons are obligated to and do comply with confidentiality obligations consistent with (and no less restrictive than) this Section 11. The term "Confidential Information" means the provisions of this Agreement (which shall be the Confidential Information of both parties, subject to the following sentence), and any and all information, written or oral, provided or made available by or on behalf of one party or its affiliates, contractors, or vendors to the other party or its affiliates, contractors, or vendors in

connection with this Agreement or the parties' relationship hereunder, whether or not designated as confidential. Consultant may disclose an accurate summary of the relationship formed hereunder, provided that Consultant does not reveal any associated pricing information, or other relationship details not included in prior disclosures that Client has previously and expressly designated as being excluded from this disclosure right.

Information of a third party to whom a party owes a duty of confidentiality will be treated as Confidential Information of that party if it meets the description above. However, (a) Confidential Information does not include information that: was or is publicly available other than as a result of breach of this Agreement by Recipient; was or is lawfully received by the

Recipient free of any obligation of confidentiality, or is independently developed by or on behalf of the Recipient without the use of the Discloser's Confidential Information; and (b) Recipient may disclose the Discloser's Confidential Information to the extent such disclosure is necessary in connection with the enforcement of this Agreement; or necessary to comply with any legal or regulatory requirements, provided that the Recipient gives the Discloser prompt notice of the compelled disclosure and cooperates with the Discloser in seeking a protective order or any other protections available to limit the disclosure of the Discloser's Confidential Information.

12. Insurance

During the term of this Agreement, Consultant shall procure and maintain for itself and its employees all insurance coverage as required by federal or state law, and at a minimum, include the following:

a. Commercial General Liability/Automobile Liability Insurance

The consultant shall obtain and maintain Commercial General Liability insurance and Automobile Liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract or the general aggregate limit shall be twice the required occurrence limit. The consultant's insurance coverage shall be written on an occurrence basis.

b. Workers' Compensation and Employer's Liability Insurance

The consultant shall obtain and maintain statutory Workers Compensation Insurance and Employer's Liability insurance in the amount of One Million Dollars (\$1,000,000) per accident.

c. Professional Liability Insurance

The consultant shall obtain and maintain Professional Liability insurance in the amount of One Million Dollars (\$1,000,000) per claim. Professional Liability insurance must be maintained and evidence of insurance shall be provided to the Client for at least three (3) years after completion of the contract of work.

d. Acceptability of Insurers

Insurance is to be placed with insurers with a current Best Rating of A:VII unless otherwise acceptable to Client.

e. Verification of Coverage

Insurance, deductibles or self-insurance retentions shall be subject to Client's approval Original Certificates of Insurance with endorsements shall be received and approved by the Client before work commences and insurance must be in effect for the duration of the contract. The absence of insurance or a reduction of stated limits shall cause all work on the project to cease. Any delays shall not increase costs to the Client or increase the duration of the project.

f. Other Insurance Provisions

The Sylvan Union School District, its officers, officials, employees and volunteers are to be covered as additional insured by Endorsement CG 20 10 11 85 or other endorsement approved by Client's Risk Manager for Commercial General Liability and Automobile Liability coverage.

For any claims related to this project, the Consultant's insurance coverage shall be primary and any insurance or self-insurance maintained by Client, its officers, officials, employees and volunteers shall not contribute to it.

Each insurance policy required shall be endorsed that a thirty (30) day notice be given to the Client in the event of cancellation or modification to the stipulated insurance coverage.

In the event the Consultant employs subcontractors as part of the work covered by this Agreement, it shall be the responsibility of the Consultant to ensure that all subcontractors comply with the same insurance requirements that are stated in this Agreement.

Approval of the insurance by the Client or acceptance of the Certificate of Insurance by the Client shall not relieve or decrease the extent to which the Consultant may be held responsible for payment of damages resulting from the Consultant's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of Client's rights to insurance coverage hereunder.

If, for any reason, the Consultant fails to maintain insurance coverage that is required pursuant to this contract, the same shall be deemed a material breach of contract. Client, at its sole option, may terminate this contract and obtain damages from the Consultant resulting from said breach. Alternately, the Client may purchase such required insurance coverage, and without further notice to the Consultant, the Client may deduct from sums due to the Consultant any premium costs advanced by the Client for such insurance.

13. Limitation of Liability

Consultant shall not be liable for any lost profits or for any indirect, incidental, consequential, punitive or other special damages suffered by Client arising out of or related to this Agreement, even if advised of the possibility of such damages.

Client shall not be liable for any lost profits or for any indirect, incidental, consequential, punitive or other special damages suffered by Consultant arising out of or related to this Agreement, even if advised of the possibility of such damages.

14. Indemnity

- A. To the fullest extent permitted by law, Consultant and Client agree to save, indemnify, defend and hold harmless each other, including the directors, officers, employees or agents of Consultant and Client from any and all liability, claims, suits, actions, arbitration proceedings, administrative proceedings, and regulatory proceedings, losses, expenses, or any injury or damage of any kind whatsoever, whether actual, alleged or threatened, attorney fees, court costs, and any other costs of any nature without restriction

incurred in relation to, as a consequence of, or arising out of, the performance of this Agreement, and attributable to the fault of the other. Following a determination of the percentage of fault and or liability by agreement between the Consultant and Client or a court of competent jurisdiction, the party responsible for liability to the other will indemnify the other party to this Agreement for the percentage of liability determined.

- B. Nothing to the contrary withstanding, any limitation on liability and/or remedies set forth herein does not apply in the event that the services performed under the Agreement results in injury or death to persons or damage to tangible property.

15. Disputes / Arbitration

In the event of a dispute between the parties arising out of, respecting, caused by, concerning, or relating to this Agreement, or the breach thereof, or the relationship or activities of the parties to this Agreement, or the Limitation of Liability and Indemnity provisions of this Agreement (the "Dispute"), and if the Dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the Dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration. Any such mediation shall be completed within sixty (60) days of the time notice of a Dispute is given by one party, unless the parties agree to extend the time limits.

If mediation does not resolve the Dispute, the parties shall arbitrate the Dispute. The arbitration shall be administered by the American Arbitration Association under its Commercial Arbitration Rules (except as modified herein), and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof within the State of California. Arbitration shall take place in the State of California, County of Stanislaus. The arbitrator shall provide a decision in writing stating his/her reason and rationale for the decision. Prior to the arbitration, the parties shall have the right to demand from one another the disclosure of relevant and discoverable documents, as well as a list of witnesses the other party intends to call at the arbitration, and a summary of the issues to be raised, which information shall be provided two (2) weeks in advance of the arbitration date. Arbitration shall be the parties' exclusive remedy.

16. Miscellaneous

This Agreement, together with all Exhibits, constitutes the entire agreement between the parties, and any other warranties or agreements are hereby superseded. No amendment, modification, or waiver of any provision of this Agreement shall be binding unless in writing and signed by an appropriate officer or duly authorized employee of each party to the Agreement.

If any provision set forth in the Agreement is invalid or unenforceable under any law, the validity of the remainder of the Agreement shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make it consistent with applicable law. The modified provision shall be enforceable and enforced, provided it does not impose on any party obligations or benefits that are materially greater than those provided under the original provision.

Under no circumstances shall failure by either party to insist upon compliance with any provision of this Agreement, or either party's delay or failure to exercise of any right or remedy under this Agreement, operate to waive or modify any such provision, right or remedy or render it unenforceable as to any other time or occurrence.

Neither party may assign all or a portion of its rights or duties hereunder without the prior written consent of the other party.

In the event of any litigation or arbitration between the parties arising out of, respecting, caused by, concerning, or relating to this Agreement, or the breach thereof, or the relationship or activities of the parties to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

Any notice, demand, or request given in accordance with this Agreement shall be given by personal delivery; by messenger delivery; by facsimile transmission; by placing said notice in the United States mail, registered or first-class, postage prepaid; or by sending such notice via an overnight courier service. Notice shall be deemed given when delivered to a party (personally, by messenger, or by an overnight courier service); when the facsimile transmission occurs; or two days after the date the notice is deposited in the United States mail, postage prepaid.

Notice shall be given to Consultant as follows:

2211 Michelson Drive, Suite 1200
Irvine, CA 92612
Attn: Kris Allison, President & CEO

Notice shall be given to Client as follows:

605 Sylvan Avenue
Modesto, California 95350
Attn: Superintendent

Each party to this Agreement has had the opportunity to consult with counsel of its choice as to the form and content of this Agreement and the advisability of executing it. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in any interpretation of this Agreement.

This Agreement shall inure to the benefit of the respective successor and permitted assigns of each party, and shall be binding upon the successors and permitted assigns of each party.

Neither party will be responsible for any delay or failure in the performance of its duties caused by forces or events beyond its reasonable control.

Nothing in this Agreement is intended to confer upon any other party any rights or remedies hereunder, and no third party may claim to be a beneficiary of this Agreement.

The validity and interpretation of the provisions of this Agreement will be governed by the laws of California without regard to any provisions governing conflict of laws, and both parties agree that, subject to the provision entitled "Disputes/Arbitration," the exclusive jurisdiction and the proper venue for any action brought hereunder will be the court of California or the federal courts in California.

Sylvan Union School District

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|----------------------------|----------------------|
| _____ <i>Signature</i> | _____ <i>Date</i> |
| _____ <i>Print Name</i> | |
| _____ <i>Title</i> | |

Burnham Benefits Insurance Services

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| _____ <i>Tina Voengj</i> <i>Signature</i> | _____ <i>5-28-20</i> <i>Date</i> |
| _____ <i>Tina Voengj</i> <i>Print Name</i> | |
| _____ <i>Vice President</i> <i>Title</i> | |

| <p align="center">Exhibit 1</p> <p align="center"><i>Full Service Consulting & Fees</i></p> <p align="center">Service Description</p> | <p align="center">Fee</p> |
|---|--|
| <p>Benefits Consulting, Development & Cost Management</p> <ul style="list-style-type: none"> ✦ Strategic plan development & management ✦ Health and Welfare renewal evaluation and negotiations ✦ Benefits marketing services ✦ Carrier trend analysis ✦ Cost analysis ✦ Comprehensive plan design assessment and evaluation ✦ Network comparisons and utilization ✦ Benchmarking data research and reports ✦ Provide renewal reporting ✦ Targeted consumerism assessment (HSA, FSA, HRA, CDHP, etc.) ✦ Continual account stewardship reporting ✦ Attend all necessary meetings | <p align="center">Full-Services Consulting Contract: \$95,000 Annual Fee with optional 3 year extension (see item 4)</p> |
| <p>Risk Management Services, Underwriting and Analytics</p> <ul style="list-style-type: none"> ✦ Actuarial services ✦ In-house industry underwriters ✦ Budgeting & contribution modeling ✦ Funding analysis ✦ Claims analysis ✦ Financial and trend reporting ✦ Leverage analytical tools and technology to proactively manage healthcare costs and claim risk ✦ Manage claim reporting to evaluate trends and patterns | <p align="center">Included in above fee</p> |

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| <p>Affordable Care Act Compliance</p> <ul style="list-style-type: none"> ➤ ACA readiness analysis & financial modeling, including: <ul style="list-style-type: none"> - ACA compliance & applicability - Actuarial value assessment - Affordability Report - Full-time Employee Analysis and Variable Hour Tracking Assessment ➤ ACA Reporting Assessment & Preparation ➤ ACA Compliance Audit ➤ Summary of Compliance Recommendations ➤ Webinars, Educational Meetings, and Presentations | <p>Included in above fee</p> |
| <p>Other Compliance Services (State and Federal)</p> <ul style="list-style-type: none"> ➤ In-House Attorney, Compliance Department ➤ ACA, COBRA, HIPAA, State & Federal Legislative Updates ➤ Contract review & notice disclosures | <p>Included in above fee</p> |
| <p>Communications</p> <ul style="list-style-type: none"> ➤ In-house marketing & communications design team ➤ Onboarding - EE & open enrollment meetings - face-to-face / webinars ➤ Custom benefit enrollment brochures ➤ Employee surveys ➤ Total compensation statements, Hidden Paychecks ➤ Market ready collateral (ACA, wellness, financial tips, etc.) ➤ Web-based enrollment materials ➤ Educational benefits videos ➤ Review and guidance on internal website | <p>Included in above fee</p> |
| <p>Innovation & Technology</p> <ul style="list-style-type: none"> ➤ In-house or independent review of technology solutions ➤ EDI & systems management and integration ➤ EASE Enrollment Platform ➤ Online HR portal with market ready collateral | <p>Included in above fee</p> |
| <p>Wellness, Health & Well-Being</p> <ul style="list-style-type: none"> ➤ In-house wellness consultant ➤ Wellness initiatives and ongoing support, active participation on committees or committee development | <p>Included in above fee</p> |

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| <ul style="list-style-type: none"> ➤ Wellness total health and productivity needs assessment, planning, and execution ➤ Strategic program management ➤ Implementation of vendors ➤ Health fairs and flu shots support ➤ Program planning, incentive development ➤ Wellness compliance review ➤ Coordination of screening and onsite events | |
| <p>Value Added Services Included</p> <ul style="list-style-type: none"> ➤ Benefits hotline / call center ➤ Eligibility, claim, billing and access to care resolution ➤ COBRA administration ➤ HR consulting, hotline and unlimited online training | <p>Included in above fee</p> |