

**RESOLUTION**  
of the  
**BOROUGH OF NEW PROVIDENCE**  
Resolution No. 2019-268

Council Meeting Date: 12-16-2019

Date Adopted: 12-16-2019

TITLE: RESOLUTION AUTHORIZING AGREEMENT BETWEEN THE BOROUGH OF NEW PROVIDENCE AND BROWN AND BROWN BENEFIT ADVISORS FOR PUBLIC EMPLOYEE INSURANCE CONSULTANT SERVICES

Councilperson Muñoz submitted the following resolution, which was duly seconded by Councilperson Cumiskey.

WHEREAS, the Borough of New Providence has a need to acquire Public Employee Insurance Consultant Services to assist in the management of providing employee health coverage; and

WHEREAS, Brown and Brown Benefit Advisors has submitted a proposal indicating they will provide the services at a rate of \$3,000.00 per month for the year 2020; and

WHEREAS, the Borough Administrator recommends acquiring the services of Brown and Brown Benefit Advisors for the year 2020, and

WHEREAS, the maximum amount of the contract is not to exceed \$36,000.00 and said funds will be appropriated in the 2020 municipal budget account:

0-01-20-105-281-00000

BE IT RESOLVED by the Mayor and Council of the Borough of New Providence, in the County of Union and State of New Jersey, that they do hereby approve and authorize an agreement between Brown and Brown Benefit Advisors and the Borough of New Providence for Public Employee Insurance Consultant Services, in the form attached hereto.

APPROVED, this 16th day of December, 2019.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
CUMISKEY	X			
DESARNO	X			
GENNARO	X			
GEOFFROY	X			
MUÑOZ	X			
ROBINSON	X			
MORGAN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 16th day of December, 2019.

Wendi B. Barry, Borough Clerk

## CONSULTANT SERVICES AGREEMENT

THIS **CONSULTANT SERVICES AGREEMENT** (this "Agreement"), effective January 1, 2020 (the "Effective Date"), is made by and between **BOROUGH OF NEW PROVIDENCE** ("Borough"), and **BROWN & BROWN BENEFIT ADVISORS, INC.** ("Consultant").

### Background

Borough wishes to retain Consultant to perform certain specified advisory services as described in this Agreement. Consultant wishes to perform such services according to the terms and conditions in this Agreement for the compensation set forth in this Agreement. The parties agree as follows:

1. **Term.** The term of this Agreement shall commence on the Effective Date and continue for a period of one (1) year, unless sooner terminated as herein provided.

2. **Relationship of Parties.** Consultant is an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship, a joint venture relationship or partnership relationship. In consideration of the compensation paid to the Consultant by the Borough, Consultant will provide services to the Borough as an insurance consultant. Borough acknowledges that Consultant, or its parent Borough, Brown & Brown, Inc. ("Parent"), and related or affiliated companies (collectively with Parent, "B&B Affiliates"), may provide services as an insurance agent on behalf of certain insurance carriers or risk-bearing entities. Borough expressly consents to such relationship, if applicable, in the rendition of services by Consultant under this Agreement.

3. **Consultant Services.** Consultant, subject to the terms of this Agreement, shall provide certain services set forth in the attached Schedule A (the "Services"). **Nothing in this Agreement shall be construed to impose any obligations on Consultant, or limitations on Consultant's compensation, relative to services other than as specifically delineated above.**

4. **Borough Responsibilities.** In consideration of the Services provided by Consultant, Borough agrees as follows:

(a) Borough shall cooperate fully with Consultant and the insurance companies with whom Consultant solicits in the performance of Consultant's obligations under this Agreement.

(b) Borough shall timely produce complete and accurate information including, but not limited to, current financial information, statements of values, loss information and any other information, necessary for the effectuation of insurance coverage

at the request of Consultant. Borough further agrees to provide Consultant with notice of any material changes in Borough's business operations, risk exposures or in any other material information provided under this Agreement. In addition, Borough shall carefully read each insurance policy issued to Borough in order to confirm the accuracy of the facts reflected therein and that the policy(ies) contain(s) the terms and coverages desired. Borough is responsible for recommending any changes to insurance policies issued to Borough.

5. **Compensation.** In consideration of the Services, Borough shall compensate Consultant as set forth in Schedule B (the "Consultant Services Fee"). With regard to the Consultant Services Fee, Borough and Consultant acknowledge and agree as follows:

(a) Compensation for the Services specified under this Agreement is exclusive of all federal, state and local sales, use, excise, receipts, gross income and other similar taxes and governmental charges and fees. Any such taxes, charges or fees for the Services under this Agreement, now imposed or hereafter imposed during the term of this Agreement, shall be in addition to the compensation, premiums and charges set forth in this Agreement and shall be paid by Borough upon request.

(b) Borough acknowledges and agrees that the Consultant Services Fee is reasonable in relation to the Services to be provided by Consultant hereunder.

6. **Confidentiality.** To the extent consistent with performances of Consultant's duties under this Agreement, Consultant and Borough agree to hold in confidence Confidential Information (defined below). Borough acknowledges, however, that Consultant will disclose Confidential Information as reasonably required in the ordinary course of performing the Services to insurance companies and other insurance

intermediaries. “**Confidential Information**” means all nonpublic information and all documents and other tangible items (whether recorded information, on paper, in computer readable format or otherwise) relating to the disclosing party’s business (including without limitation business plans, manner of doing business, business results or prospects), proposals, recommendations, marketing plans, reports, any of which (i) at the time in question is either protectable as a trade secret or is otherwise of a confidential nature (and is known or should reasonably be known by receiving party as being of a confidential nature) and (ii) has been made known to or is otherwise learned by receiving party as a result of the relationship under this Agreement. Confidential Information should be protected with the same reasonable care as each party protects its own Confidential Information.

Confidential Information will not include any information, documents or tangible items which (i) are a matter of general public knowledge or which subsequently becomes publicly available (except to the extent such public availability is the result of a breach of this Agreement), (ii) were previously in possession of receiving party as evidenced by receiving party’s existing written records, or (iii) are hereafter received by receiving party on a non-confidential basis from another source who is not, to receiving party’s knowledge, bound by confidential or fiduciary obligations to disclosing party or otherwise prohibited from transmitting the same to receiving party. In the event that Consultant or Borough become legally compelled to disclose any of the Confidential Information, they shall provide the other party with prompt notice so that such party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or that the other party waives compliance with the provisions of the Agreement, such party may disclose such information as is necessary or advisable to comply with the legal process.

**7. Termination.**

(a) Either party may terminate this Agreement, without cause and for any reason whatsoever, by giving written notice of termination to the other party at least ninety (90) days prior to the effective date of termination, which shall be specified in such written notice.

(b) Notwithstanding the provisions in sub-paragraph (a) above, Borough may terminate this Agreement upon the happening of any one of the

following causes: (i) Suspension or termination of Consultant’s insurance license in the State of New Jersey if not cured by Consultant within sixty (60) days following such suspension or termination; (ii) Consultant’s participation in any fraud; or (iii) Consultant’s material failure to properly perform its duties and responsibilities hereunder because of Consultant’s gross neglect, proven dishonesty, or commission of a felony.

(c) Notwithstanding the provisions in sub-paragraph (a) above, Consultant may terminate this Agreement upon the happening of any one of the following causes: (i) Borough’s failure to pay any Consultant Services Fee more than five (5) days after such payment is due; (ii) Borough’s participation in any fraud; or (iii) Borough’s material failure to properly perform its duties and responsibilities hereunder because of Borough’s gross neglect, proven dishonesty, or commission of a felony.

Termination for any cause enumerated in sub-paragraphs (b) or (c) shall become effective upon the delivery of written notice of termination to the breaching party or at such later time as may be specified in the written notice.

(d) Termination of this Agreement shall not release Borough from any accrued obligation to pay any sum to Consultant (whether then or thereafter payable) or operate to discharge any liability incurred prior to the termination date.

**8. Notices.** Any notices required or permitted to be given under this Agreement shall be sufficient if in writing by Certified Mail to:

If to Borough:

360 Elkwood Avenue  
New Providence, NJ 07974  
Attn: Doug Marvin, Borough Administrator  
Email: [dmartin@newprov.org](mailto:dmartin@newprov.org)

If to Consultant:

56 Livingston Avenue, Suite 220  
Roseland, NJ 07068  
Attn: Louis Della Penna, Jr.  
Email: [loujr@advisorsbb.com](mailto:loujr@advisorsbb.com)

With a copy to:

Brown & Brown, Inc.  
220 S. Ridgewood Avenue  
Daytona Beach, FL 32114  
Attn: General Counsel

or such other address as either shall give to the other in writing for this purpose.

9. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision.

10. **New Jersey Law Applies; Venue.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Jersey without regard to its conflicts of laws principles. Exclusive venue is agreed to be in a state or federal court of competent jurisdiction in or for Union County, New Jersey.

11. **Limitation of Liability; Waiver of Jury Trial.** THE PARTIES WAIVE ANY RIGHT TO A TRIAL BY JURY IN THE EVENT OF LITIGATION ARISING OUT OF THIS AGREEMENT. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA OR USE, UNLESS SUCH DAMAGE OR LOSS WAS CAUSED BY A

BREACH OF THIS AGREEMENT, OR THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE OTHER PARTY.

12. **Assignment.** Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. This Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and permitted assigns.

13. **Entire Agreement.** This Agreement (including the schedules, documents and instruments referred to herein or attached hereto) constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof. The Agreement shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of Borough and Consultant by their respective duly authorized representatives.

**[Remainder of page intentionally left blank – Signature page follows.]**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Effective Date.

**BOROUGH:**

**Borough of New Providence**

**CONSULTANT:**

**Brown & Brown Benefits Advisors, Inc.**  
a New Jersey corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **SCHEDULE A**

### **CONSULTANT SERVICES**

Subject to the terms of this Consultant Services Agreement, Consultant shall provide the Services listed below, but only in relation to the following Lines of Insurance: (a) Medical; and (b) Prescription.

Services are as follows:

- a) Meet with Borough administrators to review carrier change to SHBP (completed)
- b) Assist with SHBP resolutions to enroll in new plans (completed)
- c) Review SHBP vs. current carrier benefits and saving administrator (October 2019)
- d) Perform employee enrollment meetings for new SHBP plans (October 2019)
- e) Collective bargaining consulting, meeting, etc. (ongoing)
- f) Conduct "benefit orientation" meetings for new employees (ongoing)
- g) Coordinate 1/1/2021 open enrollment meeting with SHBP (October 2020)
- h) Obtain carrier roster showing dependents aging-out (December 2020)
- i) Assist with all applicable Affordable Care Act (ACA) provisions (ongoing)
- j) Advise client on any employee insurance grievances (ongoing)
- k) Provide state and federal legislative insurance updates (ongoing)
- l) Ensure COBRA, HIPAA, CH. 375(DU31) employer compliance (ongoing)
- m) Provide enrollment addition/termination services (ongoing)
- n) Advise client on Borough policies relative to group insurance (ongoing)
- o) Section 125 Plan assistance (ongoing)
- p) Assist with member medical/prescription claim issues with HIPAA authorization (ongoing)
- q) Aon/NJ Division of Pensions & Benefits dependent audit assistance (ongoing)
- r) Coordinate future carrier changes from SHBP with business office (if necessary)
- s) Meet with Borough to review future carrier changes (if necessary)
- t) Conduct employee meetings to review future carrier changes (if necessary)

**SCHEDULE B**

**COMPENSATION**

**Consultant Services Fee:**

In consideration of the Services, Borough shall compensate Consultant in the amount of **THIRTY-SIX THOUSAND DOLLARS AND 00/100 (\$36,000.00)** (the "Consultant Services Fee"). The Consultant Services Fee shall be paid in equal monthly installments of **Three Thousand Dollars and 00/100 (\$3,000.00)**.