Date received:_____

PALO VERDE COMMUNITY COLLEGE DISTRICT BOARD OF TRUSTEES
AGENDA ITEM REQUEST

☐	Consent
☒	Action
☐	Information
☐	Discussion/Presentation

RESOLUTION TITLE:
BOARD MEETING DATE:

BACKGROUND:

It was recommended by the Insurance Committee to ask the Budget Committee for funds to pay for consulting firm to go out for bids on medical insurance coverage from the "One Time Money" fund.
The agreement with Burnham consulting firm is to provide Palo Verde College with quotes from various JPA groups on medical insurance coverage.

FISCAL IMPLICATIONS:
The cost will be $15,000 and the Budget Committee approved the funds to come out from the "One Time Money" fund.

BUDGET PAID FROM:
11-HRM-O-6730-0000-5620

RECOMMENDATION
Recommended approval from the Board of Trustees.

Administrator Initiating Item:	College Council/Full Admin Review Date:

Burnham

PALO VERDE COLLEGE

BURNHAM BENEFITS INSURANCE SERVICES

Benefits Marketing Agreement

Dan Exceen, Sr. Vice President
Ann Marie Estrada, Sr. Account Executive

December 1, 2015

CONSULTING AGREEMENT

This Consulting Agreement is between Burnham Benefits Insurance Services, ("Consultant") and, the Palo Verde College ("the College" or PVC) (collectively the "Parties"), and is effective December 1 , 2015.

RECITALS

A. Consultant wishes to provide marketing and analytical services to the College, and the College wishes to retain Consultant to perform those services.

B. The College does not retain the authority to direct the day-to-day performance of the Consultant's services, but rather is requesting certain tasks to be accomplished by Consultant based upon Consultant's specific skills and expertise.

AGREEMENT

1. SERVICES, CONSIDERATION AND TERM

   (a) Services. Consultant shall perform for the College services described in Exhibit A to this Agreement ("Services") herewith attached and incorporated.

   (b) Compensation. The College shall pay Consultant on a flat fee as set forth in Exhibit A to this Agreement.

   (c) Term. This Agreement will become effective as of the date first set forth above and shall remain in full force and effect until June 30, 2016. This Agreement may be renewed upon agreement of the Parties provided: however, this Agreement shall not exceed five years (including all extensions) in accordance with Education Code section 17596.

2. CONFLICTING OBLIGATIONS

   Consultant confirms that they have not executed nor is bound by, or party to, any non-compete covenant, restriction, or other agreement, contractual or otherwise, with any prior or current customer or firm with which the Consultant has been associated or which would prevent the consultant from working with the College in the capacity as stated herein, or otherwise impede or restrict the fulfillment of the terms of this Agreement with the College.

3. INDEPENDENT CONSULTANT

(a) Independent Consultant Status. It is the express intention of the parties that Consultant is an independent firm and not an employee, agent, representative, joint venture or partner of the College. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the College and Consultant. Consultant is obligated to report as income all income received by Consultant pursuant to this Agreement, and Consultant agrees to and acknowledges the obligation to pay all employment and other taxes owed pursuant to this agreement. Consultant further agrees to indemnify and hold the College harmless from any and all claims made by any entity or account of an alleged failure by Consultant to satisfy such withholding or other obligation.

(b) Consultation for Others. Consultant is free to perform work as a consultant for any other entity and/or person provided that such engagement does not create a conflict of interest with Consultant's obligations to the College. Specifically, none of Consultant's services for any other entity and/or person shall compromise in any way the College's "Confidential Information" as defined in Paragraph 4 below

(c) Records and Reports. Consultant shall keep complete and systematic written records of all work relating to the performance of Services by Consultant hereunder and shall submit invoice(s) to the College accounts payable for all services rendered. Payments will be processed upon satisfactory completion of the Services and receipt of an original invoice approved by the College. The College agrees to reimburse the Consultant within thirty (30) days of receipt of billing.

4. CONFIDENTIAL INFORMATION

(a) Definition. "Confidential Information" means any of the College's proprietary information, technical data, trade secrets or know-how, including but not limited to all actual or potential customer, employee, supplier, and distributor lists, contacts and addresses, information about employees and employee relations, training manuals and procedures, Confidential Information includes, but is not limited to, information disclosed in connection with the Services. Confidential Information shall not include information that: (i) is now or subsequently becomes generally available to the public through no wrongful act or omission of the Consultant; (ii) Consultant can demonstrate to have had rightfully in its possession prior to disclosure to Consultant by the College; (iii) is independently developed by Consultant without use, directly or indirectly, of any Confidential Information; or (iv) Consultant rightfully obtains from a third party who has the right to transfer or disclose it.

(b) Non-Use and Non-Disclosure. Except to the extent necessary to perform Services, the Consultant shall not reproduce, use, distribute, disclose or otherwise disseminate College's Confidential Information. Consultant shall not take any action causing, or fail to take any reasonable action necessary to prevent, any Confidential Information

disclosed to or developed by Consultant to lose its character as Confidential Information. Consultant shall not remove Confidential Information from the College or the location(s) designated by the College except as expressly permitted by the College in writing.

(c) Return of Company Property and Information. Upon termination of this Agreement or upon request by the College, Consultant shall promptly deliver to the College any and all College property and Confidential Information in Consultant's possession, custody or control.

5. TERMINATION

(a) Termination Upon Notice. Either party may, at its option, terminate this Agreement upon thirty (30) calendar days' written notice to the other party. Upon such termination all rights and duties of the parties toward each other shall cease except as to Consultant's maintenance of confidential and proprietary information and that the College shall be obliged to pay, within thirty (30) days of the effective date of termination, for all satisfactory Services completed by Consultant through the date of notice of termination. If work in progress, the College shall be liable for only the pro-rata portion of the completed work and for incurred expenses, if any, in accordance with the provisions of Exhibit A. Any notice or other communication to be given by the College or Consultant shall be in writing and shall be deemed received when personally delivered or mailed to the address on record by certified or registered mail with return receipt requested.

(b) Continuation of Obligations. Consultant Agrees that all obligations under Paragraphs 4 and 5 of this Agreement shall continue in effect after termination of the Agreement, and that Consultant will notify any future client, potential client or employer of Consultant's obligations under this Agreement and that the College will be entitled to communicate regarding Consultant's obligations to any such person or entity.

6. INSURANCE

(a) During the term of the agreement, Consultant shall maintain for itself and its employees insurance coverage as required by federal and state law and shall maintain at least the minimum coverage limits set forth below:

(b) Professional liability/Errors and Omissions Liability Coverage with minimum limits of $2,000,000 per claim and general aggregate.

(c) The Consultant shall carry Comprehensive General Insurance with limits of not less than One Million Dollars ($1,000,000) and Auto Liability Insurance with limits of not less than One Million Dollars ($1,000,000) combined single limit respectively, bodily injury and property damage liability per occurrence.

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 the College 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.

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.

Cecilia Garcia
Chief Human Resources Officer
Palo Verde College

Dan Exceen
Sr. Vice President

Palo Verde College
One College Drive
Blythe, California 92225

Burnham Benefits Insurance Services
2211 Michelson Drive, Suite 1200
Irvine, CA 92612

Taxpayer ID Number: 33-0643611

7. MISCELLANEOUS

(a) Governing Law and Venue. This Agreement governed by California law. The federal courts or state courts of the State of California, County of Orange shall have exclusive jurisdiction to adjudicate any dispute arising out of this Agreement, and the parties hereto consent to the jurisdiction of said court and waive any objection to said venue.

(b) 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). Arbitration shall take place in the County of Orange. Prior to 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 in advance to the arbitration date. Arbitration shall be the parties' exclusive remedy.

(c) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. No modification, amendment or waiver of any of the provisions of this Agreement shall be effective unless made in writing specifically referring to this Agreement and duly signed by an authorized officer or agent for each party hereto.

(d) Assignability. Neither party shall assign, transfer or sell its rights under this Agreement or delegate its duties hereunder without the prior express written consent of the other party, and any attempted assignment or delegation shall be void and without effect.

(e) Indemnification: To the fullest extent permitted by law, Consultant and the College agree to save, indemnify, defend and hold harmless each other, including the directors, officers, employees or agents of Consultant and the College, 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

BURNHAM BENEFITS INSURANCE SERVICES
Palo Verde College

Burnham

1. **EXHIBIT A**
Consultant:

Burnham Benefits Insurance Services

2. **Services.** The Services provided by Consultant to Palo Verde College shall include, for the purpose of employee benefits marketing and evaluating:

Benefits Marketing

- Submitting a benefits request for proposal for all PVC products offered in 2016
- PVC and the insurance committee will dictate what products and vendors receive a benefit marketing proposal
- Burnham Benefits will have no financial ties to any vendors who receive a marketing request
- Receiving and exhibiting all competitive quotes from benefits marketing
- Financial cost analysis from both College and Employee perspective
- Analysis of carrier networks, administration and services
- Negotiating with all vendors on behalf of PVC
- Interview and evaluation of competitive Trusts, JPA's and Carriers
- Overview of value added services offered by competitive markets

Palo Verde College Insurance Committee

- Attendance at all committee meetings through marketing process
- Set up timeline for benefits marketing and possible departure of REEP
- Strategic planning and goal setting
- Group Insurance 101 education
- Information on all carrier/vendor services
- Overview on medical benefits market including Trusts and JPA's

Additional Transition Support

- Implementation and administration meetings with new vendors and PVC staff
- Compliance overview of new vendors
- Employee communications and education
- Creation of health and welfare benefit guides (booklets)
- Attendance at open enrollment meetings
- Post open enrollment evaluation and support

3. Consideration Due Upon Task Completion

Services as described are offered on a project basis at the sum of $ 10,000 for benefits marketing and participation with the PVC insurance committee. The additional transition support services will add the sum of $5,000. Consulting fees will be invoiced to the College at completion of the project.