



April 30, 2019

Dr. Lisa M Norman, Ed.D, J.D.
Assistant Superintendent/Vice President, Human Resource Services
Palomar College
114 West Mission Road
San Marcos, California 92069

Dear Dr. Norman,

The purpose of this letter is to confirm our conversations regarding the “Supplemental Retirement Plans (SRP)” financial analysis.

Thank you for giving us the opportunity to extend our contract with Palomar College. As this analysis is out-of-scope of our original ongoing services contract there is an additional fee. As we discussed, the fee for this project is \$20,000 and covers any associated travel or out of pockets costs limited to the scope of service below.

This fee will be paid to BCS in two installments; The first installment of \$10,000 to be paid within 14 days after the signing of this agreement. The second will be paid after the completion of the project. It is anticipated if we received the data by next week, the project will be finalized the end around mid to late June.

All payments are due within 30 days from date of receipt.

Scope of Services

- Collection of the required information/data from the College. BCS will provide a data request to the College.
- BCS will then have an additional joint discussion with the College to ensure we have complete understanding of the SRP.
- BCS will then provide an actuarial modeling providing the College cost improvement generated by the various cost saving scenarios.
- Upon acceptance of the analysis the results will be presented to Palomar College Board.
- After one year following implementation of Board approved program BCS will provide post mortem of actual versus project cost saving.

You acknowledge your responsibility to report and communicate in writing to BCS of any changes in exposures, loss-related data, and other material changes during the course of this Agreement.

Change in Scope

Please be aware that requested changes to the “scope of services” above provided by BCS could result in an increase in fees and charges. Out-of-scope services will be discussed with Palomar College for prior approval in writing.



With respect to any work, BCS retain all ownership rights to our existing and intellectual property, and any products thereof. Palomar College may internally use BCS’s intellectual property for intended purposes during the term of our agreement. Each party agrees to treat the other’s information as confidential. Palomar College agrees to only provide data (e.g., names of plan participants or beneficiaries) to BCS that is in compliance with U.S. trade statues, rules and regulates (e.g., OFAC).

BCS professional services does not in any case include legal, investment, or accounting services, and we are not a fiduciary to your plans. The services and work product provided by BCS hereunder are provided solely for your internal use; they are not intended to be used or relied upon by third parties.

Any disputes under this letter will be governed by the internal laws of California.

Please acknowledge your consent to these arrangements for this engagement by signing below. Please contact us with any questions or comments. Again, we look forward to working with you and your team.

Sincerely,

Michael Muheisen
Senior Vice President, Operations & Consulting

Accepted this ___ day of _____, 20___ by Palomar College.

By: _____

Name: _____

Title: _____

General Terms

1. Ownership and Control of Data and Work Product

- (a) BCS has created, acquired or otherwise has rights in, and may, in connection with the performance of Services hereunder, employ, provide, modify, create, acquire or otherwise obtain rights in, various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques (including, without limitation, function, process, system and data models); templates; software systems, user interfaces and screen designs; general purpose consulting and software tools; websites; benefit administration systems; and data, documentation, and proprietary information and processes (“BCS Information”).
- (b) All right, title and interest in and to any data, information and other materials furnished to BCS by Client hereunder (“Client Information”) are and shall remain Client’s sole and exclusive property. Client grants to BCS a license to use such Client Information to provide the Services. Except as provided below, upon full and final payment to BCS hereunder, any BCS work product which the parties expressly agree is created solely and exclusively to be owned by Client (the “Deliverables”), if any, shall become the property of Client. To the extent that any BCS Information is contained in any of the Deliverables, subject to the terms of this Agreement, BCS hereby grants to Client a paid-up, royalty-free, nonexclusive license to use such BCS Information solely for Client’s internal use in connection with the Deliverables.
- (c) To the extent that BCS utilizes any of its property, including, without limitation, the BCS Information, in connection with the performance of Services, such property shall remain the property of BCS and, except for the limited license expressly granted in the preceding paragraph, the Client shall acquire no right or interest in such property. Client will honor BCS copyrights, patents, and trademarks relating to Services, Deliverables and BCS Information, and will not use BCS’s name or other intellectual property without BCS’s prior written consent.
- (d) Provided that Client promptly notifies BCS of a claim that the BCS Information infringes a presently issued U.S. patent or copyright, BCS will defend such claim at its expense and will indemnify Client for any costs and damages that may be awarded against Client in connection with such claim. BCS will not indemnify Client, however, if the claim of infringement results from (i) use of other than the most recent version of the BCS Information made available to Client by BCS; (ii) Client’s alteration of the BCS Information; (iii) use of any BCS Information in combination with other software not provided by BCS; or (iv) improper use of BCS Information.
- (e) Nothing contained in this Agreement will prohibit BCS from using any of its general knowledge or knowledge acquired under this Agreement (excluding Client’s Confidential Information) to perform similar services for others.

2. Confidentiality

- (a) For the purposes of this Agreement, "Confidential Information" includes: (i) the terms of this Agreement (including any Schedules); (ii) Client Information; (iii) BCS Information; (iv) oral and written information designated by a party as confidential prior to the other party obtaining access thereto; and (v) oral and written information which should reasonably be deemed confidential by the recipient whether or not such information is designated as confidential. Each party's respective Confidential Information will remain its sole and exclusive property.
- (b) Each party will use reasonable efforts to cause its employees to minimize distribution and duplication and prevent unauthorized disclosure of the Confidential Information of the other party. Each party agrees that only employees who have a need to know the Confidential Information of the other party will receive such Confidential Information. No party will disclose the other party's

Confidential Information to a third party without the prior written consent of the other party, which consent may be conditioned upon the execution of a confidentiality agreement reasonably acceptable to the owner of the Confidential Information, except that BCS may use Client's Confidential Information in combination with other data, including the disclosure of such information to third parties, provided that no such Client Confidential Information is identifiable by Client or Client employee and that either party may disclose the other party's Confidential Information to its legal counsel and auditors. BCS may also disclose Client's Confidential Information to any subcontractor or, as instructed by Client, to any other third party providing services to Client under this Agreement as reasonably necessary for such subcontractor or third party to perform its services, provided that any such subcontractor is subject to a confidentiality agreement. BCS may retain a copy of all Client Confidential Information for archival purposes.

- (c) Confidential Information does not include information if and to the extent such information: (i) is or becomes generally available or known to the public through no fault of the receiving party; (ii) was already known by or available to the receiving party prior to the disclosure by the disclosing party; (iii) is subsequently disclosed to the receiving party by a third party who is not under any obligation of confidentiality to the party who disclosed the information; or (iv) has already been or is hereafter independently acquired or developed by the receiving party without violating any confidentiality agreement with or other obligation to the party who disclosed the information.
- (d) The receiving party may disclose Confidential Information of the disclosing party if required to as part of a judicial process, government investigation, legal proceeding, or other similar process, provided that the receiving party has given prior written notice of such requirement to the disclosing party. Reasonable efforts will be made to provide this notice in sufficient time to allow the disclosing party to seek an appropriate confidentiality agreement, protective order, or modification of any disclosure, and the receiving party will reasonably cooperate in such efforts.

3. Representations and Responsibilities

- (a) BCS represents that it: (i) shall, at all times during the term of this Agreement, remain in material compliance with all laws and regulations applicable to it as a service provider, including any required licenses, permits, or registrations, necessary for BCS to be able to perform the Services; and (ii) has no outstanding commitment or agreement to which it is a party or legal impediment of any kind known to it which is likely to limit, restrict, or impair the rights granted to Client hereunder. If a potential conflict should arise, BCS will discuss the situation with Client.
- (b) Client will submit to BCS all Client Information in Client's control necessary for BCS to perform the Services covered by this Agreement. The Services are not of a legal nature, and BCS will in no event give, or be required to give, any legal opinion or provide legal representation to Client. Client will maintain in compliance with applicable law any and all benefit plan legal documents related to the Services. Client is responsible for the accuracy and completeness of any and all Client Information that is submitted to BCS. Client agrees to notify BCS as soon as possible of any problems or errors in Client Information submitted. Services performed by BCS in correcting such problems or errors are additional services for which additional fees will be payable.
- (c) BCS is not a fiduciary within the meaning of the Employee Retirement Income Security Act (ERISA) or other legislation. BCS has no discretion with respect to the management or administration of Client's employee benefit plans, and/or control or authority over any assets of Client's employee benefit plans, including the investment of those assets. All such discretion and control remain with Client and other fiduciaries to Client's employee benefit plans.

4. Liability/Indemnification

- (a) BCS will correct its work product without additional charge if any errors or omissions occur in its work. BCS shall indemnify and hold Client harmless from and against any and all damages, losses and liabilities (collectively, a “Loss” or “Losses”) arising from BCS’s failure to comply with the applicable terms and conditions of this Agreement (regardless of whether such Loss is based on breach of contract, tort, strict liability, breach of warranty, failure of essential purpose or otherwise):
- (i) for Losses arising from (aa) BCS’s willful, fraudulent or criminal misconduct, (bb) bodily injury, including death, or damage to personal or real property, (cc) infringement by BCS Information pursuant to Section 1(d) hereof, and (dd) BCS’s breach of its confidentiality obligations set forth in Section 2 hereof. Any claim under this Section 4(a) must be asserted before the date that is three (3) years following the act or omission giving rise to the claim.
- (b) Subject to BCS’s indemnity obligations in Sections 1(d) and 4(a), Client shall indemnify, defend, and hold BCS harmless from and against any and all Losses arising from (i) claims made by third parties, including, without limitation, Client’s employees, affiliates, and plans with respect to the Services provided hereunder if such losses arise from Client’s negligence or willful or criminal misconduct, or (ii) Client’s failure to comply with the applicable terms and conditions of this Agreement, including without limitation, any infringement of BCS Information by Client in violation of Section 1 or any breach by Client of the confidentiality provisions of Section 2.
- (c) In no event will either party be liable to the other party for incidental, consequential, special, or punitive damages (including loss of profits, data, business or goodwill, or government fines, penalties, taxes, or filing fees), regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranty, failure of essential purpose or otherwise, and even if advised of the likelihood of such damages.
- (d) Notwithstanding the foregoing, as applicable to the Client and the Services, BCS will not be liable to Client for any amounts for which Client or any of its employee benefits plans would have been responsible to pay irrespective of any act, error or omission by BCS, including interest adjustments. Each of BCS and Client agrees to use reasonable efforts to mitigate its own, as well as the other party’s, liability, damages, and other losses suffered in connection with this Agreement.

5. Dispute Resolution

Except where law prohibits, the following procedures shall be used in the event of any dispute or controversy arising out of or relating to this Agreement. All negotiations between the parties conducted pursuant to the dispute resolution process described herein (and any of the parties’ submissions in contemplation hereof) shall be kept confidential by the parties and shall be treated by the parties and their respective representatives as compromise and settlement negotiations for purposes of the applicable court rules of evidence.

- (a) The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Either party may give the other party written notice of any dispute not resolved in the ordinary course of business. Within fifteen (15) days after delivery of the notice, the party receiving the notice shall submit to the other a written response.
- (b) Within thirty (30) days after delivery of the notice, the designated executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary,



to attempt to resolve the dispute. All reasonable requests for information made by one party to the other shall be honored in a timely fashion.

6. Insurance/Indemnity

- (a) Coverage. BCS shall maintain, at all times during the term of this Agreement, the following minimum insurance coverages and limits:
 - (i) Workers' Compensation and related insurance as prescribed by the law of the state in which the Services are to be performed;
 - (ii) General Liability in the amount of \$1,000,000 per occurrence and \$3,000,000 in the aggregate; and
 - (iii) Professional Liability in the amount of \$1,000,000 per occurrence and in the aggregate.
- (b) Best Rating. BCS will place such insurance with carriers possessing a B+VII or better rating.