

## CONSULTING AGREEMENT

This Consulting Agreement (this "Agreement") is made by and between Gallagher Benefit Services, Inc., ("Gallagher") and City of Clinton (the "Client").

The Client wishes to enter into a consulting relationship with Gallagher on the terms and conditions set forth in this Agreement, and Gallagher is willing to accept such a consulting relationship.

In consideration of and in reliance upon the previous paragraph and the terms and conditions contained in this Agreement, the Client and Gallagher agree as follows:

### 1. *Engagement*

The Client engages Gallagher as an employee benefits consultant as stated in this Agreement and Gallagher accepts this engagement. During the time that Gallagher is performing services for the Client under this Agreement, and for all purposes outlined in this document, Gallagher's status will be that of an independent contractor of the Client.

### 2. *Term and Termination*

The Effective Date of this Agreement is January 1, 2015. The term of Gallagher's engagement under this Agreement (the "Consulting Period") will begin as of the Effective Date and will remain in effect for six (6) months from the Effective Date. **The Consulting Period will be automatically extended for an additional year on each anniversary of the Effective Date.** Either party may terminate this Agreement by giving the other party at least thirty (30) days written notice of its intent to terminate. In the event such termination is effective during the Consulting Period (including any renewed Consulting Period), Client shall be responsible to Gallagher for any services performed prior to the date of termination and Gallagher shall be responsible to Client to continue to provide services until the date of termination of this Agreement.

### 3. *Services*

Gallagher will provide employee benefits management consulting services to the Client and consult with its employees, representatives, agents and contractors as to such matters as more fully described in Exhibit A attached to this Agreement and incorporated herein. Gallagher will perform other services as the Client and Gallagher mutually agree in writing.

### 4. *Compensation*

Subject to any changes as may be mutually agreed by the parties, Gallagher will receive, as compensation for its services under this Agreement, fees in the amount of \$13,287.00 for six months, which amount will be billed in equal installments of \$2,214.50 and paid on a monthly basis.

For additional information regarding Gallagher compensation, please see the Gallagher revenue disclosure policy and schedule set forth in Exhibit B.

In the event an insurance company cancels or refuses to renew an insurance coverage that had been placed by Gallagher, on behalf of the Client, Gallagher will use its best efforts to obtain appropriate replacement coverage from another insurance company.

### 5. *Performance and Scope*



(a) Gallagher Not a Fiduciary Under ERISA. To the extent that one or more of the Client's employee benefit plans are subject to the Employee Retirement Income Security Act, as amended ("ERISA") and in spite of any other provision of this Agreement to the contrary, the parties agree and acknowledge that:

(i) Gallagher's services under this Agreement are not intended in any way to impose on Gallagher or any of its affiliates a fiduciary status under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"); and

(ii) this Agreement does not provide Gallagher, and the Client will not cause or permit Gallagher to assume, without prior written consent of Gallagher, any:

(A) discretionary authority or discretionary control respecting management of any "employee benefit plan" within the meaning of Section 3(3) of ERISA (an "ERISA Plan"),

(B) authority or control respecting management or disposition of the assets of any ERISA Plan, or

(C) discretionary authority or discretionary responsibility in the administration of any ERISA Plan.

(b) Reliance. In the performance of its duties, Gallagher may rely upon, and will have no obligation to independently verify the accuracy, completeness, or authenticity of, any written instructions or information provided to Gallagher by the Client or its designated representatives and reasonably believed by Gallagher to be genuine and authorized by the Client.

(c) No Practice of Law. Gallagher will not be obligated to perform, and the Client will not request performance of, any services which may constitute unauthorized practice of law. The Client will be solely responsible for obtaining any legal advice, review or opinion as may be necessary to ensure that its own conduct and operations, including the engagement of Gallagher under the scope and terms as provided herein, conform in all respects with applicable State and Federal laws and regulations (including ERISA, the Internal Revenue Code, State and securities laws and implementing regulations) and, to the extent that the Client has foreign operations, any applicable foreign laws and regulations.

(d) Subcontractors. Gallagher may cause another person or entity, as a subcontractor of Gallagher, to provide some of the services required to be performed by Gallagher hereunder; provided, that Gallagher shall remain responsible for all acts and omissions of any such subcontractors (each of which shall be bound by Gallagher's obligations under this Agreement). Gallagher shall seek prior written approval from Client for any subcontractors providing substantive consulting, professional or managerial services. Prior written approval shall not be required for clerical, office, secretarial, IT back-up, administrative or similar support services.

(e) Conflict of Interest. Gallagher's engagement under this Agreement will not prevent it from taking similar engagements with other clients who may be competitors of the Client. Gallagher will, nevertheless, exercise care and diligence to prevent any actions or conditions which could result in a conflict with Client's best interest.

(f) Acknowledgements. In connection with Gallagher's services under this Agreement, Client agrees that:

(i) Although Gallagher will apply its professional judgment to access those insurance companies it believes are best suited to insure the Client's risks, there can be no assurance that the insurance companies Gallagher has accessed are the only or are the best suited ones to insure the Client's risks.

(ii) Any compensation of the types described above and disclosed to it does not constitute a conflict of interest and the Client expressly waives any claims alleging any such conflict of interest.

(iii) The final decision to choose any insurance company has been made by the Client in its sole and absolute discretion. The Client understands and agrees that Gallagher does not take risk, and that Gallagher does not guarantee the financial solvency or security of any insurance company.

(iv) The compensation payable to Gallagher is solely for the services set forth under this Agreement, including Exhibit A. Any additional administrative, claims representative or other services (collectively, "Additional Services") will be governed by the terms of a separate agreement covering the Additional Services.

(v) The Client is responsible for immediate payment of Gallagher's fees (if applicable) and payment of premiums for all insurance placed by Gallagher on Client's behalf. If any amount is not paid in full when due, including premium payments to insurance companies, that nonpayment will constitute a material breach of this Agreement that will allow Gallagher to immediately terminate this Agreement, at its option, without notice to the Client, and may allow an insurance company for the Client's risks to cancel any applicable policies in accordance with the terms of such policies.

## 6. Confidentiality

(a) Client Information. Gallagher recognizes that certain confidential information may be furnished by the Client to Gallagher in connection with its services pursuant to this Agreement ("Confidential Information"). Gallagher agrees that it will disclose Confidential Information only to those who, in Gallagher's reasonable determination, have a need to know such information. Confidential Information will not include information that (i) is in the possession of Gallagher prior to its receipt of such information from the Client, (ii) is or becomes publicly available other than as a result of a breach of this Agreement by Gallagher, or (iii) is or can be independently acquired or developed by Gallagher without violating any of its obligations under this Agreement. However, disclosure by Gallagher of any Confidential Information pursuant to the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency or by a legislative body or committee will not constitute a violation of this Agreement.

(b) HIPAA Privacy. Gallagher and the Client will each comply with any prohibitions, restrictions, limitations, conditions, or other requirements to the extent they apply to them directly or indirectly pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulation concerning privacy of individually identifiable health information as set forth in 45 CFR Parts 160-164, as amended from time to time. Where required, the Client, as a representative of the health plans and Gallagher will enter into a separate Business Associate Agreement.

(c) Use of Names; Public Announcements. No party will use, in any commercial manner, the names, logos, trademarks or other intellectual property of the other party without its prior written consent. Except as may be required by law, no party will issue any press releases or make any public announcements of any kind regarding the relationship between the parties without the other party's prior consent.

**7. Indemnification Rights and Limitation of Liability**

Gallagher will promptly defend, indemnify and hold the Client harmless from and against any and all claims, suits, actions, liabilities, losses, expenses or damages, including reasonable attorneys fees, which the Client may incur as a result of any violation by Gallagher or any of its agents, including a subcontractor, of any law, or any loss or expense to the Client caused by the negligent act or omission of Gallagher or any of its agents, including a subcontractor, or any breach of this Agreement. However, notwithstanding any other term or provision of this Agreement, Gallagher shall not be liable to the Client for any exemplary, special, indirect, incidental, consequential or punitive damages (including but not limited to lost profits) which may result from Gallagher's or any of its agents', including a subcontractor's action or its failure to perform any term or condition of this Agreement or whether such liability is based upon tort, strict liability, breach of warranties, failure of essential purpose or otherwise and if advised of the possibility of such damages. Furthermore, the aggregate liability under this Agreement, if any, of either party to the other for claimed losses or damages shall not exceed \$20,000,000. This provision applies to the fullest extent permitted by applicable law.

**8. Notices**

Any notices, requests and other communications pursuant to this Agreement will be in writing and will be deemed to have been duly given, if delivered in person or by courier or sent by express, registered or certified mail, postage prepaid, addressed as follows:

If to the Client: City of Clinton  
Attention: Seth Adams  
City Hall  
415 Gary Boulevard,  
PO Box 1177  
Clinton, OK 73601

If to Gallagher: Gallagher Benefit Services, Inc.  
Attention: Jerry Roberts  
3856 S. Boulevard, Ste 100  
Edmond, OK 73013

Either party may, by written notice to the other, change the address to which notices to such party are to be delivered or mailed.

**9. Miscellaneous**

(a) **Severability.** The various provisions and subprovisions of this Agreement are severable and if any provision or subprovision or part thereof is held to be unenforceable by any court of competent jurisdiction, then such enforceability will not affect the validity or enforceability of the remaining provisions or subprovisions or parts thereof in this Agreement.

(b) **Entire Agreement; Amendment.** This Agreement, including all exhibits hereto, constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether oral or written, between the parties regarding the subject matter hereof. Except for changes in carriers and/or lines of coverage noted in Exhibit B which may occur upon unilateral approval of the Client, this Agreement may be modified or amended only by a written instrument executed by both parties.



(c) **Governing Law; Rule of Construction.** This Agreement will be construed, interpreted and enforced in accordance with the laws of the State of Oklahoma without giving effect to the choice of law principles thereof or any canon, custom or rule of law requiring construction against the drafter.

(d) **Successors.** This Agreement shall be binding upon and shall inure to the benefit of all assigns, transferees and successors in the interest of the parties hereto.

(e) **Counterparts.** This Agreement may be executed by the parties in several counterparts, each of which shall be deemed to be an original copy.

(f) **Survival of Provisions.** Sections 5(a), 6 and 7 will survive the termination of this Agreement.

**[The remainder of this page intentionally left blank.  
The parties' signatures appear on the following page.]**



IN WITNESS WHEREOF, the parties hereto have caused this Consulting Agreement to be duly executed on the date first written above.

**CITY OF CLINTON**

By: \_\_\_\_\_

Name: Seth Adams

Title: Mayor

Date: \_\_\_\_\_

**GALLAGHER BENEFIT SERVICES, INC.**

By: \_\_\_\_\_

Name:  Jerry Roberts

Title: Area President

Date: \_\_\_\_\_



**EXHIBIT A  
SCOPE OF SERVICES**

Subject to any changes and additions as may be mutually agreed by the parties in writing, availability and delivery of data from the insurance carrier and other third party vendors, Gallagher will provide the following services:

**CONSULTING SERVICES PROVIDED ON AN "AS NEEDED" BASIS**

**RENEWAL ANALYSIS:**

- Review and evaluate carrier projections
- Prepare "shadow" renewal projection
- Create financial modeling reports using proprietary Apex software
- Coordinate carrier negotiations
- Create employee contribution modeling reports
- Review identified benchmarks of projected plan costs
- Develop "working" rates for Client analysis and approval
- Assist with budget projections
- Provide renewal alternatives with cost impact of benefit plan changes

**PERIODIC PLAN FINANCIAL REPORTS: (FREQUENCY TO BE MUTUALLY AGREED UPON)**

- Summary of plan costs
- Analysis of actual vs. budget
- Employee contributions
- Large claims tracking
- Identification of costs for specific line of coverage
- Comparison of plan costs to aggregate stop-loss projections, if applicable
- Utilization review
- Comparison to prior claim period
- Plan trends

**ANNUAL FINANCIAL REPORTS (END OF YEAR ACCOUNTING):**

- Executive summary of program expenses
- Comparison of current costs to renewal costs
- Incurred But Not Reported (IBNR) claims analysis
- Overview of specific Stop-loss projections
- Future plan costs projections
- Dollars saved by contract negotiation
- Percent of benefit dollars paid by employee
- Claims by size
- Physician visit details
- Benefits paid by type of service
- Plan funding/budget comparison
- Fixed expense comparison

**LEGISLATIVE AND CORPORATE COMPLIANCE SUPPORT:**

- Provide legislative updates, including Technical Bulletins and Directions newsletters
- Evaluate plan design to assist with compliance with state and federal regulations
- Review benefit plan documents, including summary plan descriptions, contracts, employee summaries, and policies/procedures
- Conduct periodic seminars on regulatory issues
- Assist with the review and evaluation of COBRA and HIPAA compliance procedures



- Provide general information and guidance to assist with compliance with ERISA, FMLA, USERRA, Medicare Part D and other Federal legislation that directly affects the administration of plan benefits
- Provide template or sample compliance notices, certificates of creditable coverage and enrollment forms as reasonably requested by Client

**CARRIER MARKETING AND NEGOTIATIONS, AS DIRECTED BY CLIENT:**

- Work with Client to develop a strategy to identify goals, analyze program costs and review both current and alternative funding arrangements
- Manage the renewal process with the current carrier to control costs
- Implement carrier renewal strategies with Client
- Develop timeline covering every aspect from RFP preparation to the delivery of employee communications
- Provide analysis of employee disruption report and preparation of geo-access report
- Provide analysis of discounts offered by various carriers by using CPT codes and carrier pricing data
- Manage RFP development that tailors the RFP to the desires, needs and financial directions provided by Client
- Explore alternative funding solutions
- Evaluate vendor responses to track variations in coverage and costs as they are identified
- Conduct finalist interviews to investigate and document intangibles such as personalities, service orientation and responsiveness
- Draft renewal analysis report, based on renewal negotiation, covers program and claims cost projections as well as complete information on benefit designs
- Facilitate decision process by coordinating close collaboration and discussions among the Gallagher team and Client

**DAY TO DAY ADMINISTRATIVE ASSISTANCE**

**EMPLOYEE EDUCATION PROGRAMS:**

- Facilitate focus groups
- Monthly benefit communication directed to employees
- Educational meetings on coverage and trends

**COMMUNICATION MATERIALS:**

- Assist with the drafting and distribution of participant Satisfaction Surveys
- Assist with the drafting and distribution of Open Enrollment-New Member Orientation summary information and any other communications pertaining to the health and welfare program
- Provide annual open enrollment guidance and employee meeting materials
- Assist with marketing and oversight of Customized Enrollment Materials (if elected)
- Assist with participant wellness initiatives, as directed by Client



**BENEFIT ADMINISTRATION ASSESSMENT:**

- Periodic evaluation of internal plan enrollment and benefit termination processes
- Review, coordinate and implement Client agreed upon plan “best practices” to help limit plan liability and increase participant satisfaction
- Help identify opportunities for streamlining and improving administration procedures

**MARKET BENCHMARKING STUDIES:**

- Local Area Surveys
- Industry Surveys

**BENEFIT PLAN DESIGN (OR REDESIGN):**

- Help Client identify business and HR objectives that impact benefits
- Review with Client possible benefit strategies to meet their objectives
- Help Client evaluate/review current scope of benefits package – e.g., types & levels of coverage
- Work with Client to develop funding and contribution strategies
- Assist with budget projections for design alternatives



**EXHIBIT B  
COMPENSATION DISCLOSURE STATEMENT**

What follows is the disclosure of our actual fees and/or commissions related to Client's Group Health Plan(s) and any relationships, or agreements Gallagher has with the insurance company involved in this transaction. Gallagher, as agent of record, will receive the following initial and renewal sale commissions expressed as percentage of gross premium payments, or fees as agreed upon by Client:

Line of Coverage	Insurance Company	Effective Date	Commission <sup>1</sup> / Supplemental Compensation <sup>2</sup>	Direct Fees <sup>3</sup>
Consulting Services	Gallagher Benefit Services, Inc.	01/01/2015	None	13,287.00
Medical	TML	01/01/2015	None	Included
Dental	Blue Cross	10/01/2014	Flat 10% / NA	Included
Life/AD&D	Prudential	10/01/2014	Graded 15% to 0% / Graded 0% to 1.75%	Included
STD	Prudential	10/01/2014	Graded 10% to 1% / Graded 0% to 1.75%	Included
LTD	Prudential	10/01/2014	Graded 15% to 0% / Graded 0% to 1.75%	Included

It should also be noted that:

- **Gallagher is not an affiliate of the insurer whose Contract is recommended.** This means the insurer whose contract is recommended does not directly or indirectly have the power to exercise a controlling influence over the management or policies of Gallagher.
- **Gallagher's ability to recommend other insurance contracts is not limited by an agreement with the Insurance Carrier.**
- **Gallagher is effecting the transaction for the Plan(s) in the ordinary course of Gallagher business.**
- **The transaction set forth is at least as favorable to the Plan(s) as an arm's length transaction with an unrelated party.**
- **Gallagher is not a trustee of the Plan(s) and is neither the Plan Administrator of the Plan(s), a fiduciary of the Plan(s), nor an employer which has employees in the Plan(s).**

**For Employers and Plan Sponsors Subject to ERISA:** This Disclosure Statement is being given to the Client (1) to make sure Client knows about Gallagher's and Gallagher affiliates' income before purchasing the insurance product and (2) for plans subject to ERISA, to comply with the disclosure, acknowledgment and approval requirement of Prohibited Transaction Class Exemption No. 84-24<sup>4</sup>, which protects both Client and Gallagher<sup>5</sup>. Disclosure must be made to an independent plan fiduciary for the ERISA Plan(s), and Client acknowledges and confirms that this is a reasonable transaction in the best interest of participants in its ERISA Plan(s).

<sup>1</sup> Commissions include all commissions/fees paid to Gallagher that are attributable to a contract or policy between a plan and an insurance company, or insurance service. This includes indirect fees that are paid to Gallagher paid by a third party, and includes, among other things, the payment of "finders' fees" or other fees to Gallagher for a transaction or service involving the plan.

<sup>2</sup> Gallagher companies may receive supplemental compensation referred to in a variety of terms and definitions, such as contingent commissions, additional commissions and supplemental commission.

<sup>3</sup> Direct Fees include compensation to Gallagher paid for directly by the plansponsor.

<sup>4</sup> Which allows an exemption from a prohibited transaction under Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA).

<sup>5</sup> In making these disclosures, no position is taken, nor is one to be inferred, regarding the use of assets of a plan subject to ERISA to purchase such insurance.



For more information on Gallagher's compensation arrangements, please visit [www.ajg.com/compensation](http://www.ajg.com/compensation). In the event a client wishes to register a formal complaint regarding compensation Gallagher receives, please send an email to [Compensation\\_Complaints@ajg.com](mailto:Compensation_Complaints@ajg.com) or send a letter to: AVC Compliance Officer, c/o Internal Audit Department, Arthur J. Gallagher & Co., Two Pierce Place, Itasca, IL 60143.

