

UNION COUNTY IMPROVEMENT AUTHORITY

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 Rahway, New Jersey, 07065
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Resolution No. 45-2015

Date: June 3, 2015

RESOLUTION OF THE UNION COUNTY IMPROVEMENT AUTHORITY APPROVING AN AGREEMENT BY AND BETWEEN THE AUTHORITY AND BROWN & BROWN METRO, INC. FOR INSURANCE BROKER SERVICES FOR 2015

APPROVED AS TO FORM:
 Lisa M. da Silva, RMC
 Clerk of the Authority

APPROVED AS TO SUFFICIENCY OF FUNDS
 YES NO NONE REQUIRED
 UNION COUNTY IMPROVEMENT AUTHORITY

Lisa M. da Silva

M. W. B. [Signature]

	PRESENT	ABSENT	AYE	NAY	ABSTAIN	MOTION	SECOND
<i>Bornstad</i>	1		1				
<i>D'Elia</i>		1					
<i>Hines</i>	1		1				
<i>Hockaday</i>	1		1				1
<i>Salerno, Secretary</i>	1		1			1	
<i>Tomko, Treasurer</i>	1		1				
<i>Vollero</i>	1		1				
<i>Rountree, Vice Chair</i>	1		1				
<i>Scutari, Chairman</i>	1		1				

Resolution No. 45-2015

Date: June 3, 2015

**RESOLUTION OF THE UNION COUNTY IMPROVEMENT AUTHORITY
APPROVING AN AGREEMENT BY AND BETWEEN THE AUTHORITY
AND BROWN & BROWN METRO, INC. FOR INSURANCE BROKER
SERVICES FOR 2015**

WHEREAS, the Union County Improvement Authority (the "Authority") has been duly created by or **WHEREAS**, the Union County Improvement Authority (the "Authority") was created by a resolution of the Board of Chosen Freeholders of the County of Union as a public body corporate and politic of the State of New Jersey, pursuant to, and in accordance with the County Improvement Authorities Law, N.J.S.A. 40:37A-44, *et seq.*, and the acts amendatory thereof and supplemental thereto; and

WHEREAS, the Authority previously issued a Request for Qualifications (the "RFQ") for various professionals, including insurance broker services, pursuant to a "Fair and Open Process," N.J.S.A. 19:44A-20.1 *et seq.*, and subsequently received sealed proposals in response to the RFQ; and

WHEREAS, upon review of the proposals, the Authority adopted a list of qualified consultants and professionals to perform consulting and professional services for the Authority on an as-needed basis for the year 2015 pursuant to their respective proposals; and

WHEREAS, Brown & Brown Metro, Inc. was deemed qualified to provide Insurance Broker Services (the "Services") on an as needed basis;

WHEREAS, the Authority is now in need of the Services with respect to health insurance for its employees, and desires to award a contract for such Services to Brown & Brown Metro, Inc. (the "Professional") during the period commencing immediately and until the Authority's next reorganization meeting in February 2016,

NOW, THEREFORE, BE IT RESOLVED by the Union County Improvement Authority that the contact with Brown & Brown Metro, Inc. in the form attached hereto and made a part hereof, is approved; and

BE IT FURTHER RESOLVED, that the Clerk is hereby directed to publish notice of the award in accordance with the Local Public Contract Law, N.J.S.A. 40A:11-1 *et seq.*

**AGREEMENT BY AND BETWEEN
UNION COUNTY IMPROVEMENT AUTHORITY
AND
BROWN & BROWN METRO, INC.
FOR INSURANCE BROKER SERVICES**

THIS AGREEMENT, dated as of _____ 2015, by and between the Union County Improvement Authority, 1499 Routes 1 and 9, Rahway, New Jersey 07065 (the "Authority") and Brown & Brown Metro, Inc. P.O. Box 678 Florham Park, New Jersey 07632.

W I T N E S S E T H:

WHEREAS, the Authority previously issued a Request for Qualifications (the "RFQ") for Insurance Broker Services pursuant to a "Fair and Open Process," N.J.S.A. 19:44A-20.1 *et seq.*, and subsequently received sealed proposals in response to the RFQ; and

WHEREAS, upon review of the proposals, the Authority determined that Brown & Brown Metro, Inc. was qualified to provide Insurance Broker Services, having an excellent reputation in its field, and significant knowledge of the Authority and its operations; and

WHEREAS, the Authority adopted a resolution approving Brown and Brown Metro, Inc. (the "Professional") as a qualified professional to provide Insurance Broker Services to the Authority on an as needed basis during 2015;

WHEREAS, the Authority is in need of Insurance Broker Services related to health insurance for its employees, and the Authority and the Professional wish to enter into this Agreement to set forth the services to be rendered by the Professional (the "Services") and the compensation to be paid for the Services;

NOW THEREFORE, the Parties hereto, each intending to be legally bound herein, do mutually agree as follows:

1. Scope of Services. The Professional hereby agrees to perform such Services as shall include, but not be necessarily limited to, those set forth in the RFQ and the Professional's response to the RFQ, which are incorporated herein and made a part hereof as though repeated in full.

2. Personal Services. The Professional represents that only its personnel will perform the Services required under this Agreement. In the event the Professional cannot provide the Services due to vacation, illness, or other reason, the Authority will designate other qualified persons to perform the Services temporarily. In no event shall the Professional assign or transfer its obligations under this Agreement to another firm or individual. The Professional's personnel shall not be employees of or have any other contractual relationship with the Authority.

3. Term. This Agreement shall be for the period commencing upon execution of this Agreement and terminating upon the appointment of a firm to provide Insurance Broker Services at the Authority's Annual Reorganization Meeting in February 2016, unless otherwise extended or terminated in writing.

4. Compensation. The Professional shall receive no direct compensation from the Authority because the Professional shall be compensated through commissions paid by the insurance carriers as arranged by and between the Professional and the insurance carriers, in accordance with all applicable rules and regulations promulgated by the New Jersey Department of banking & Insurance.

5. Affirmative Action. During the performance of this Agreement, the Professional shall comply with the anti-discrimination provisions of N.J.S.A. 10:2-1 *et seq.*, the New Jersey Law Against Discrimination, and N.J.S.A. 10:5-1, *et seq.*, N.J.A.C. 17:27-1.1, *et seq.* and N.J.A.C. 6:4-1.6, as set forth in Schedule A to this Agreement. The Professional also agrees to afford equal opportunity in performance of this Agreement in accordance with an affirmative action program approved by the State Treasurer, as stated in Exhibit B to the RFQ, which the Professional acknowledged and affirmed in its response thereto.

6. Professional's Representations. The Professional makes the following representations and covenants:

(a) the Professional has the legal capacity to enter into this Agreement and perform each of its undertakings herein set forth;

(b) the Professional is a duly organized and validly existing legal entity under the laws of the State of New Jersey and has duly adopted the necessary resolutions approving and authorizing the execution and delivery of this Agreement and authorizing and directing the persons executing this Agreement to do so for and on its behalf;

(c) to the best of the Professional's knowledge, there is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (i) questions the validity of this Agreement or any action or act taken or to be taken by them pursuant to this Agreement; or (ii) is likely to result in a material adverse change in such entity's authority, property, assets, liabilities or condition which will materially and substantially impair its ability to perform pursuant to the terms of this Agreement;

(d) the Professional's execution and delivery of this Agreement and its performance hereunder will not constitute a violation of any partnership and/or stockholder agreement or of any agreement, mortgage, indenture, instrument or judgment, to which it is a party;

7. Authority's Representations. The Authority makes the following representations and warrants:

(a) that this Agreement has been duly authorized by its Governing Body according to law, and upon execution by its Mayor, it shall be valid and binding upon the Authority;

(b) To the best of the Authority's knowledge, there is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (i) questions the validity of this Agreement or any action or act taken or to be taken by them pursuant to this Agreement; or (ii) is likely to result in a material adverse change in such entity's authority,

property, assets, liabilities or condition which will materially and substantially impair its ability to perform pursuant to the terms of this Agreement.

8. Default and Termination.

(a) Events of Default by the Professional. The following shall constitute Events of Default by the Professional unless such event results from the occurrence of an Uncontrollable Circumstance or the fault of the Authority or any third party:

(i) the persistent and repeated failure(s) of the Professional to timely perform any material obligation under the terms of this Agreement, subsequent to its receipt of a written notice from the Authority of such persistent and repeated failure(s) to perform, and the Professional has not, within 20 days, cured or attempted or commenced a cure of such failure;

(ii) (1) the Professional being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (2) a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding is instituted by the Professional under the laws of any jurisdiction or against the Professional if it does not take appropriate action to dismiss said proceedings within 30 days of the institution of such proceedings, or (3) any action or answer by the Professional approving of, consenting to, or acquiescing in, any such proceeding, or (4) the levy of any distress, execution or attachment upon the property of Professional that shall substantially interfere with its performance hereunder;

(iii) breach of any material representations by the Professional set forth in this Agreement, and failure to remedy such breach for a period of 30 days after written notice thereof has been provided by the Authority specifying such failure and requesting that such condition be remedied;

(b) Events of Default by the Authority. The following shall constitute Events of Default by the Authority unless such event results from the occurrence of an Uncontrollable Circumstance or the fault of the Professional or any third party:

(i) the persistent and repeated failure(s) of the Authority to timely perform any material obligation under the terms of this Agreement, subsequent to receipt by the Authority of a written notice from the Professional of such persistent and repeated failure(s) to perform, and the Authority has not, within 20 days, cured or attempted or commenced a cure of such failure;

(ii) breach of any material representations by the Authority set forth in this Agreement and failure to remedy such breach for a period of 20 days after written notice thereof has been provided by the Professional specifying such failure and requesting that such condition be remedied.

(c) Initial Remedy in the Event of Default. Except as otherwise provided in this Agreement, in the event of a default under this Agreement or any of its terms or conditions by either party, the defaulting party shall, within 20 days of receiving written notice from the other, proceed to commence to cure or remedy the default. In case such action is not taken or not diligently pursued, or the default shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy the default, including, but not limited to, proceedings to compel specific performance by the defaulting party.

9. Remedies in the Event of Termination of Agreement. Upon termination, the Authority shall pay the Professional in full for Services rendered up to the date of termination, including out of pocket expenses, in accordance with the provisions of Paragraph 4 hereof, and the Professional shall release to the Authority each and every document in its possession relating to or regarding the Project.

10. Termination by the Authority. The Authority may, in its sole discretion, terminate this Agreement upon ten days prior written notice to the Professional of such termination, which shall specify the effective date on which the Agreement will be terminated. Upon termination the Authority shall pay the Professional in full for Services rendered up to the date of termination in accordance with the provisions of Paragraph 4 hereof.

11. Insurance. Throughout the Term, the Professional shall maintain the insurance coverage set forth below. Such insurance shall be obtained from insurance companies authorized to do business in the State and with a Best's rating of at least "B+" or the equivalent.

(a) Workers Compensation: Statutory requirements.

(b) Comprehensive AL/GL, Bodily Injury, and Property Damage with a certificate of insurance specifying as a minimum, Broad Form Property Damage; Contractual Liability (Broad Form) including Third-Party Coverage and Personal Injury insurance combined single limits of \$1,000,000 per occurrence/\$2,000,000 aggregate, and in no case less than \$1,000,000 per person.

(c) Professional Liability Insurance: Minimum \$1,000,000 per claim and a \$2,000,000 annual aggregate limit of liability.

(d) Form and Content. Except with respect to the professional liability insurance policy, all policies, binders or interim insurance contracts with respect to the insurance coverage to be maintained by the Professional shall:

(i) designate the Authority, its offices, employees and agents (except in the case of Workers' Compensation insurance) as additional insureds;

(ii) provide that there shall be no recourse against the Authority for payment of premiums or commissions or any additional premiums or assessments;

(iii) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Authority or the Professional to the extent that such other insurance provides the Authority or the Professional with contingent and/or excess liability insurance with respect to its interest in the Project; and such insurance shall expressly provide that all provisions thereof (except the limits of liability, which shall be applicable to all insureds as a group and liability for premiums) shall operate in the same manner as if each were a separate policy covering each insured;

(iv) provide that the Authority shall be furnished with at least 30 days prior written notice by registered mail, return receipt requested, of any cancellation, expiration or non-renewal of coverage and that no cancellation, expiration or non-renewal shall be effective absent such notice;

(v) waive any right of subrogation of the insurers against the Authority or the Professional and any right of the insurers to any set off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of such person/party insured under such policy.

(c) Prior to the date on which the Professional shall begin the Services, it shall provide the Authority with certificates of insurance that evidence compliance with the requirements stated above. Thereafter, new or renewal certificates shall be delivered at least 30 days prior to expiration of the current policy. If the Professional shall fail or neglect to obtain or to maintain (or cause same to be obtained or maintained) any insurance that it is required to provide or to furnish the Authority with satisfactory evidence of coverage on any such policy, the Authority may purchase such insurance if the Professional fails to do so within five days after receipt of written notice from the Authority of the lack of required coverage. Any such payments made by the Authority shall be recoverable from the Professional immediately upon demand by the Authority.

12. Indemnification and Hold Harmless. The Professional and its consultants agree to indemnify and defend, to the fullest extent possible under the Professional's insurance coverage, and hold harmless the Authority, and its officers, employees, and agents from and against any and all claims, demands, suits, proceedings, liabilities, judgments, awards, losses, damages, costs and expenses, including reasonable attorney's fees, because of bodily injury, sickness, disease or death, sustained by any person or persons or injury or damages to, or destruction of, any property, but only to the extent of arising out of the Professional's negligent acts or omissions in connection with the performance of the Services.

13. Notices. Any notice or communication which is required or permitted to be given hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, with a copy sent by nationally recognized overnight delivery service providing for receipt against delivery, courier, or telecopy (with a copy sent by one of the other means of delivery), as follows:

To Professional: Brown & Brown Metro, Inc
 P.O. Box 678
 Florham Park, New Jersey 07632

To Authority: Daniel P. Sullivan, Executive Director
Union County Improvement Authority
1499 US Highway One, North
Rahway, New Jersey 08065

14. Waiver. The waiver by either party of a default or of a breach of any provision of this Agreement by the other party shall not operate or be construed to operate as a waiver of any subsequent default or breach of such provision or any other provision. The making or the acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

15. Modifications. The provisions of this Agreement may be modified or amended only by written agreement duly executed by both parties.

16. Headings. Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement nor shall they affect the interpretation thereof.

17. Governing Law. This Agreement shall be governed by the laws of the State of New Jersey. Any litigation that may result from a dispute between the parties concerning this Agreement and the rights and obligations of the parties hereto, shall be venued in the court for the State of New Jersey or the United States District Court for the District of New Jersey, as applicable.

18. Counterparts. This Agreement may be executed in more than one counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same instrument.

19. Severability. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall use their best efforts to negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or to such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, supplemented, or otherwise affected by such action, remain in full force and effect.

20. Third Party Relationships. Nothing contained in the Agreement shall create a contractual relationship with, an obligation to, or a cause of action in favor of any third-party against either the Authority or the Professional.

21. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to their rights and obligations hereunder. The terms of the Professional's Proposal are incorporated herein and made a part of this Agreement as though the Proposal was set forth in full herein. In the event of a conflict between this Agreement and the terms of the Professional's Proposal, the terms of this Agreement shall prevail.

22. Dispute Resolution. Any and all disputes arising out of this Agreement shall be submitted to an alternative dispute resolution practice such as mediation, binding arbitration or non-binding arbitration, pursuant to industry standards, prior to being submitted to a court for


adjudication. The alternative dispute resolution practices shall not apply to any dispute concerning any subcontracts to be entered into pursuant thereto. Notwithstanding the foregoing, nothing contained herein shall prevent the Authority from seeking injunctive or declaratory relief from a court of competent jurisdiction, at any time.

IN WITNESS WHEREOF, the Authority, by resolution duly adopted, has caused this Agreement to be approved and executed, and the Authority and the Professional have caused this Agreement to be executed on the day and year first above written.

ATTEST:

UNION COUNTY IMPROVEMENT AUTHORITY

By: Quam. Dasilva

By:  _____, Chairman

BROWN & BROWN METRO, INC.

By: _____