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REGISTER OF ACTIONS

CASE NO. A-14-701398-B

Business Benefits Inc, Plaintiff(s) vs. Clark County School District,
Defendant(s)

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Case Type: **Business Court**
Subtype: **Other Business Court Matters**
Date Filed: **05/29/2014**
Location: **Department 27**
Cross-Reference Case Number: **A701398**

PARTY INFORMATION

		Lead Attorneys
Defendant	Clark County School District	
Defendant	Cranor, Erine E	
Plaintiff	Business Benefits Inc	Erika Pike Turner Retained 7027965555(W)

EVENTS & ORDERS OF THE COURT

	OTHER EVENTS AND HEARINGS
05/29/2014	Case Opened
05/29/2014	Discovery Heard by Department/Deemed Complex
05/29/2014	Complaint (Business Court) Complaint
05/29/2014	Initial Appearance Fee Disclosure Initial Appearance Fee Disclosure
06/02/2014	Motion for Declaratory Relief Plaintiff's Motion for Declaratory Relief and Preliminary Injunction, and Ex-Parte Application for Order Shortening Time
06/18/2014	Motion for Declaratory Relief (10:30 AM) (Judicial Officer Allif, Nancy) Plaintiff's Motion for Declaratory Relief and Preliminary injunctionm and Ex-Parte Application for Order Shortening Time

FINANCIAL INFORMATION

	Plaintiff Business Benefits Inc		
	Total Financial Assessment		1,530.00
	Total Payments and Credits		1,530.00
	Balance Due as of 06/16/2014		0.00
05/29/2014	Transaction Assessment		1,530.00
05/29/2014	Wiznet	Receipt # 2014-61713-CCCLK	Business Benefits Inc (1,530.00)

CIVIL COVER SHEET

A-14-701398-B

Clark County, Nevada

XXVII

Case No.

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): BUSINESS BENEFITS, INC., a Nevada corporation

Defendant(s) (name/address/phone): CLARK COUNTY SCHOOL DISTRICT, a political subdivision of the State of Nevada; ERIN E. CRANOR, an individual

Attorney (name/address/phone):

Erika Pike Turner (NV Bar No. 6454)

Gordon Silver 3773 Howard Hughes Pkwy., 9th Fl.,

Las Vegas, NV 89169 (702) 796-5555

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ Arbitration Requested**Civil Cases**

Real Property	Negligence	Torts
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence - Auto <input type="checkbox"/> Negligence - Medical/Dental <input type="checkbox"/> Negligence - Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence - Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition

Probate**Other Civil Filing Types**

Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Act/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters
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III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

<input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 90) <input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Investments (NRS 104 Art. 8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademarks (NRS 600A)	<input type="checkbox"/> Enhanced Case Mgmt/Business <input checked="" type="checkbox"/> Other Business Court Matters
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May 29, 2014

Date

Signature of initiating party or representative



CLERK OF THE COURT

COMP
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ERIKA PIKE TURNER
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Email: eturner@gordonsilver.com
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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

BUSINESS BENEFITS, INC., a Nevada
corporation;

Plaintiff,

vs.

CLARK COUNTY SCHOOL DISTRICT, a
political subdivision of the state of Nevada;
ERIN E. CRANOR, an individual residing in
Nevada; DOES 1-X and ROE ENTITIES 1-X,
Inclusive.

Defendants,

CASE NO. A-14-701398-B
DEPT. XXVII

COMPLAINT

BUSINESS COURT REQUESTED

**Exempt from Arbitration - Declaratory
Relief and other Extraordinary Relief
Requested**

Plaintiff BUSINESS BENEFITS, INC. ("BBI"), by and through its counsel, the law firm of Gordon Silver, complains against Defendants CLARK COUNTY SCHOOL DISTRICT ("CCSD"), ERIN E. CRANOR ("Cranor"), DOES 1-X and ROE Entities 1-X, inclusive, and alleges as follows:

I.

THE PARTIES, VENUE AND JURISDICTION

1. BBI is, and at all times relevant hereto was, a corporation duly organized under the laws of Nevada with its principal place of business in the State of Nevada. BBI is a small, privately held employee benefits consulting and insurance brokerage business that has professionally serviced the Las Vegas community for over thirty (30) years.

2. BBI is informed and believes, and thereupon alleges, that CCSD is a political subdivision of the State of Nevada operating in Clark County, Nevada.

3. BBI is informed and believes, and thereupon alleges, that a Board of Trustees governs CCSD by providing direction to the CCSD superintendent.

4. Cranor is, and at all times relevant hereto was, an individual residing in Clark County, Nevada. BBI is informed and believes that Cranor is, and has been since 2010, a duly elected member of the Board of Trustees to CCSD.

5. Those Defendants designated herein as Doe Individuals and Roe Entities are individuals and legal entities that are either liable to BBI for the claims set forth herein, or are otherwise necessary parties to the action. The true capacities and identities of such Doe Individuals and/or Roe Entities are presently unknown to BBI and, therefore, BBI sues said Defendants by such fictitious names. BBI will amend its Complaint to assert the true names and capacities of such Doe Individuals and/or Roe Entities when more information has been ascertained.

6. This Court has personal jurisdiction over both CCSD and Cranor based upon their presence in Nevada, the conduct giving rise to BBI's claims having occurred in Nevada, and because CCSD's obligations to BBI were undertaken within Clark County, Nevada.

7. Venue is proper in this Eighth Judicial District Court pursuant to the terms of a written contract executed by CCSD, and otherwise under Nevada Revised Statutes 13.010(1), 13.020(2), 13.030(1), and 13.040.

II.

GENERAL ALLEGATIONS

A. BBI has provided valuable services to CCSD pursuant to a Written Contract.

8. As an employee benefits consulting and insurance brokerage business, BBI provides a number of professional services to its clients, including, but not limited to, health care negotiation and benefits administration services, and strategic modeling services that quantitatively analyze and identify the best benefits at the lowest cost. BBI's performance and

1 expertise in the marketplace are unparalleled, particularly here in the Las Vegas community.

2 9. At various times since 2001, BBI has provided insurance benefits consulting and
3 insurance brokerage services to CCSD.

4 10. On or about January 4, 2011, CCSD contacted Tim DeRosa, the President of BBI
5 ("DeRosa"), to inform him that Health Plan of Nevada ("HPN") – one of CCSD's insurers –
6 asked to re-open negotiations for an upcoming contract renewal, and that CCSD desired to have
7 BBI represent it in those negotiations.

8 11. Thereafter, BBI and CCSD negotiated a contract establishing terms for BBI's
9 provision of services to CCSD. The terms of contract was negotiated on behalf of CCSD by its
10 then-General Counsel, C.W. Hoffman.

11 12. On or about January 31, 2011, CCSD issued a written public announcement that it
12 had retained the services of BBI as its "exclusive broker of record" for "all medical, dental,
13 vision, life/accidental death and dismemberment, long term disability, short term disability, and
14 long term care contracts held or acquired by CCSD." The announcement further provided that
15 BBI's "designation [as CCSD's exclusive broker] shall continue in full force until CCSD or BBI
16 terminates the designation in writing *in accordance with the terms of a certain written*
17 *agreement between the parties.*" (emphasis added).

18 13. BBI and CCSD were parties to that certain written agreement styled "Contract
19 Between Clark County School District and Business Benefits, Inc.," dated January 31, 2011 (the
20 "Contract"). A true and correct copy of the Contract is attached hereto as Exhibit "1" and
21 incorporated herein by reference.

22 14. Following the execution of the Contract between BBI and CCSD, BBI acted
23 pursuant to CCSD's direction and began reviewing opportunities to improve CCSD's position
24 financially and to improve its employee benefits. BBI invested a significant amount of time and
25 effort in developing updated strategic models quantitatively analyzing and identifying the best
26 benefits at the lowest cost. Further, BBI engaged in extended negotiations with HPN and other
27 health care providers to secure valuable multiple-year contracts.

28 15. The insurance contracts negotiated by BBI pursuant to the Contract, together with

1 BBI's contribution to strategy and plan designs, effectively froze costs of health care at 2011
2 levels.

3 16. In the last round of negotiations with HPN (in the second half of 2013), at the
4 beginning of negotiations, HPN had proposed a cost increase of 37% to CCSD employees, a one
5 year contract and no additional plan options for employees. At the end of negotiations, estimated
6 aggregate cost savings to CCSD and its employees (when comparing to HPN's original proposal)
7 over the new multi-year contract that commenced January 1, 2014 are conservatively estimated
8 to exceed \$55 million. Upon information and belief, these cost savings do not adversely affect
9 overall quality of benefits to CCSD employees and employee choice has been increased.

10 17. In addition to negotiation of insurance contracts with terms favorable to CCSD
11 and its employees, BBI has dedicated staff to provide advisory services to CCSD and its
12 employees regarding benefits.

13 **B. CCSD has failed to act in accordance with the Contract.**

14 **CCSD interfered with reserves dedicated to payment of premiums.**

15 18. In order to provide more choice to CCSD employees regarding benefits packages
16 at a lower aggregate cost to CCSD and the employees, BBI structured a private exchange model
17 of delivering benefits. In order to budget for premiums to be paid by CCSD and contributions to
18 be paid by CCSD employees over the term of the insurance contracts negotiated by BBI, BBI
19 conducted detailed predictive models that included predictions of employee benefits package
20 selections and projections to CCSD.

21 19. As BBI had repeatedly demonstrated accuracy in its predictive modeling, a course
22 of dealing was established over the years where CCSD budgeted for premiums and contributions
23 to be paid by employees based on BBI's predictive models.

24 20. In August 2011, following the same predictive modeling that BBI had historically
25 provided to CCSD, it was determined that in order to maintain the highest possible level of
26 benefits for the CCSD employees, an insurance reserve subsidy of approximately \$5.5 million
27 annually was required. BBI was advised by CCSD that it had approximately \$30 million in
28 accumulated insurance reserves, specifically earmarked for use in the delivery of health benefits,

1 and that those reserves could be used in funding the negotiated benefits plan, which includes
2 employee contributions.

3 21. The CCSD employee enrollment that occurred in the fall of 2011 substantially
4 mirrored BBI's predictions. However, in an attempt to reduce the contributions required to be
5 paid by the CCSD employees, CCSD directed BBI to remodel the benefits plan with reduced
6 contributions being paid from the employees. The re-model resulted in a larger subsidy
7 requirement from CCSD's reserve account. As the negotiated insurance contract term was only
8 three (3) years and the insurance reserves were represented to be approximately \$30 million, the
9 additional reserve requirement for the rzeduced contribution model would not exhaust the
10 reserves prior to the end of the contract period in December 2013.

11 22. Upon information and belief, without regard to BBI's projections and the subsidy
12 requirements necessary to fund employee insurance premiums, CCSD used the insurance reserve
13 funds necessary to subsidize the insurance benefits plan employee contributions to fund
14 Education Support Employees Association ("ESEA") union member PERS retirement
15 contributions and cost of living salary increases. Upon information and belief, the funding of
16 retirement benefits and salaries of ESEA union members from the insurance reserves was
17 without equal participation by other unions' members.

18 23. Upon information and belief, following discovery of a multi-million dollar deficit
19 as a result of the use of insurance reserves' funding of ESEA employee benefits and salaries,
20 CCSD's then-Superintendent Dwight Jones communicated that it should be "buried" in the
21 CCSD budget. As BBI's duties were to CCSD, BBI did not interfere with CCSD's proposed
22 solution. BBI was requested by CCSD to work to remodel the benefits plan and make up the
23 deficit. BBI provided the requested extra-contractual work to CCSD.

24 24. Upon information and belief, CCSD's failed to disclose the true facts relating to
25 the deficit to the Board of Trustees and other interested parties, which resulted in unfair
26 accusations against BBI.

27 25. Upon information and belief, CCSD's new Superintendent Pat Skorkowsky and
28 Cranor (and perhaps Does) unfairly blamed BBI for a deficit that was not BBI's fault and have

1 now taken affirmative action to terminate the Contract in contravention of its terms. Upon
2 information and belief, BBI has also suffered disruption with its separate contract with the Clark
3 County Association of School Administrators ("CCASA") and BBI's commission agreement
4 with HPN.

5 CCSD has attempted to terminate the Contract in contravention of its terms.

6 26. Section 8 of the Contract expressly details the duration and termination of BBI's
7 services ("Section 8"), as follows:

8 *Contract Term: This contract shall run concurrent with each of the*
9 *insurance contracts held or acquired by CCSD* during the term of this
10 contract, or for eighteen (18) months from the Effective Date
11 whichever is longer (the "Contract Term"). The Contract Term shall
12 automatically renew at the end of the Contract Term for successive
twelve (12) month periods (the "Extended Contract Term") unless
revoked by either party hereto in writing not less than one hundred
eighty (180) days prior to the end of the Contract Term or the
Extended Contract Term as applicable.

13 (Exh. 1, § 8) (emphasis in Italics added).

14 27. Pursuant to the Contract, BBI is only paid for its services provided to CCSD
15 through the payment of commissions from the health care benefit providers. The health care
16 benefit providers pay BBI monthly commissions over the term of the insurance contract only so
17 long as BBI is the contracted broker of record.

18 28. The term of the Contract described in Section 8 was critical to BBI in its
19 negotiations of the Contract because BBI is required to expend significant time and resources to
20 secure insurance contracts, and to be engaged in strenuous negotiations with health care
21 providers months in advance of any finalized insurance contracts. Early termination of the
22 Contract prior to the expiration of the term of the insurance contract(s) negotiated by BBI
23 effectively denies BBI compensation for its services provided to CCSD.

24 29. In 2004, BBI suffered early termination of a contract with CCSD without any
25 cause, only to be re-hired under a different administration when the insurance contracts came up
26 for renegotiation. In order to avoid any early termination that effectively denied BBI its due
27 compensation, during negotiations of the Contract, DeRosa communicated to CCSD the
28

1 importance that the Contract not be terminated for convenience. BBI could not afford to suffer
2 another early termination.

3 30. In contravention of BBI's justified expectations, on or about December 31, 2013,
4 CCSD's General Counsel, Carlos McDade, communicated CCSD's intent to terminate the
5 Contract with an effective date of June 30, 2014 (the "Attempt to Terminate"). A true and
6 correct copy of the Attempt to Terminate is attached hereto as Exhibit "2" and incorporated
7 herein by reference.

8 31. Insurance contracts negotiated by BBI under the Contract, including a contract
9 with HPN, were scheduled to conclude on December 31, 2013 (the "HPN 2013 Contract").
10 Pursuant to Section 8, CCSD had until June 30, 2013—180 days prior to December 31, 2013—to
11 submit written notification to BBI informing it that CCSD was terminating the Contract. BBI
12 did not receive any such written notification on or before June 30, 2013. Instead, CCSD
13 provided its instructions to BBI to renegotiate the HPN 2013 Contract on behalf of CCSD and to
14 "fix" the deficit in insurance reserve funds at the same time.

15 32. According to CCSD's instructions, in the second half of 2013, BBI negotiated
16 new insurance contracts with HPN and various other health care service providers. During the
17 months leading up to the December 31, 2013 conclusion of the HPN 2013 Contract, BBI was
18 involved in intense negotiations and conducted multiple analytic portfolios to determine the best
19 benefits at the lowest cost for CCSD and its employees.

20 33. As a result of BBI's expenditure of significant time and effort, BBI successfully
21 negotiated a new, three-year insurance contract with HPN, commencing January 1, 2014 and
22 concluding December 31, 2016 (the "HPN 2016 Contract").

23 34. Pursuant to Section 8 of the Contract, the Contract term runs concurrently with
24 the HPN 2016 Contract, which is set to expire on December 31, 2016.

25 35. Pursuant to Section 8 of the Contract, any written notification by CCSD
26 attempting to terminate the Contract that is received on or before June 30, 2016 (including the
27 Attempt to Terminate) is not effective until December 31, 2016.

28 36. As CCSD cannot effectively terminate the Contract without cause prior to

1 December 31, 2016, CCSD's Attempt to Terminate does not comply with Section 8 of the
2 Contract.

3 **C. CCSD's interference with BBI's Commission Agreement with HPN.**

4 37. Section 15 of the Contract sets out the fee schedule (i.e., compensation) for BBI's
5 successful negotiation of health care contracts on behalf of CCSD (hereinafter referred to as
6 "Section 15"):

7 **Fee Schedule.** Supplier (BBI) shall not invoice the District (CCSD)
8 for its fees....
(Exh. 1, § 15).

9 38. Section 15 of the Contract reflects the parties' agreement that BBI shall not be
10 paid by CCSD for its services, but rather, BBI shall be compensated for its services rendered
11 pursuant to the Contract solely through commissions paid by the various health care providers
12 with whom BBI ultimately negotiates and executes contracts.

13 39. During BBI's negotiations with HPN in securing the new, three-year HPN 2016
14 Contract, BBI discovered that it had been grossly undercompensated by HPN over the years.

15 40. BBI's commission rate under the HPN 2013 Contract that terminated on
16 December 31, 2013 was subject to re-negotiation.

17 41. HPN's communicated standard, published commission rate for brokers on group
18 insurance policies covering over 500 participants (e.g., CCSD) is 2.25%.

19 42. On or about August 13, 2013, HPN's schedule of commission rates was provided
20 to CCSD by BBI, which describes that commissions shall be paid by HPN as a percentage of
21 premiums paid.

22 43. Upon information and belief, commission rates in excess of 2.5% are within
23 industry norms. BBI received confirmation in writing from the former Chief Financial Officer of
24 Sierra Health (HPN's parent company) that they were routinely paying out in excess of 2.5% for
25 its commissions to brokers on large group plans.

26 44. In order to normalize BBI's commission consistent with industry standards, BBI
27 negotiated a new commission rate with HPN. HPN ultimately agreed to pay BBI its rack
28 commission rate of 2.25% over the term of the HPN 2016 Contract.

1 45. Without regard to the terms of the Contract, HPN requested CCSD's
2 acknowledgement that it had been notified that BBI's commission rate was changed from 0.75%
3 to 2.25% as a condition of payment.

4 46. BBI contacted CCSD in order to secure the extra-contractual acknowledgment
5 that BBI had informed CCSD of the new commission rate. In response to BBI's request, CCSD
6 refused to provide the requested acknowledgement and has consequently prevented, and
7 continues to prevent, BBI from receiving the new normalized commission.

8 47. The Contract does not afford CCSD the ability to negotiate BBI commission
9 rates, or to use such rates as leverage in its attempt to wrongfully terminate the Contract.

10 48. Notably, Section 15 does not require BBI's commission rate to be contingent
11 upon any acknowledgement or agreement by CCSD; rather, the language merely requires that
12 BBI "shall not invoice the District for its fees," and that any payment BBI receives is to come
13 directly from the health care providers with whom it negotiates.

14 49. BBI is being arbitrarily and unfairly denied fair compensation for its services
15 provided pursuant to the Contract.

16 **D. Cranor is interfering with the Contract.**

17 50. In addition to CCSD's breach of the Contract and its interference with BBI's
18 agreement with HPN for commissions, Cranor, the acting president to the Board of Trustees to
19 CCSD, has also acted inappropriately.

20 51. Upon information and belief, on or about October 14, 2013, Cranor
21 communicated to the CCSD Superintendent Pat Skorkowsky that the Contract is "unfavorable to
22 the district" and that having BBI negotiate the HPN 2016 Agreement would "limit both our
23 ability to sever the existing unfavorable contract, and to limit our options going forward with a
24 plan that includes the CCEA [Clark County Education Association] employee group."

25 52. Upon information and belief, Cranor's communications to Superintendant
26 Skorkowsky and others with regard to BBI resulted in CCASA's termination of their contract
27 with BBI.

28 53. Upon information and belief, despite that Cranor knew (or should have known)

1 that the Contract could not be terminated for convenience and that its term ran concurrent with
2 any insurance contract held by CCSD, Cranor advocated to CCSD Superintendent (separate and
3 apart from the other members of the Board of Trustees) that CCSD terminate the Contract
4 without cause as set forth in the wrongful Attempt to Terminate.

5 **III.**

6 **CLAIMS FOR RELIEF**

7 **FIRST CLAIM FOR RELIEF**
8 **(Breach of Contract—CCSD)**

9 54. BBI incorporates the allegations contained in the paragraphs above, and below, as
10 if fully set forth herein.

11 55. On or about January 31, 2014, BBI and CCSD executed a valid and existing
12 contract that memorializes the consulting and brokering services of BBI on behalf of CCSD.

13 56. BBI fully performed under the terms of the Contract by successfully negotiating a
14 number of multiple-year insurance contracts with various health care providers, including,
15 multiple-year contracts with HPN.

16 57. Section 8 of the Contract requires that CCSD may only terminate the Contract
17 without cause upon written notification of the same not less than 180 days before the expiration
18 of the Contract Term.

19 58. CCSD breached the Contract by submitting an untimely written notification and
20 prematurely terminating the contract in advance of the December 31, 2016 terminate date.

21 59. BBI has expended considerable attorneys' fees and costs in its attempts to address
22 the wrongful Attempt to Terminate, which are damages as a result of CCSD's breach of the
23 Contract.

24 60. CCSD breached the Contract by taking action to deny BBI just compensation for
25 its services provided thereunder.

26 61. As a proximate result of the actions of CCSD, BBI has suffered damages in
27 excess of ten thousand dollars (\$10,000.00), a specific amount to be determined upon proof.

28 ///

SECOND CLAIM FOR RELIEF
(Contractual Breach of the Implied Covenant of Good Faith and
Fair Dealing – CCSD)

62. BBI incorporates the allegations contained in the paragraphs above, and below, as if fully set forth herein.

63. On or about January 31, 2014, BBI and CCSD executed a valid and existing contract that memorializes the consulting and brokering services of BBI on behalf of CCSD.

64. Every written contract in Nevada has an implied duty of good faith and fair dealing, which essentially forbids arbitrary, unfair acts by one party that disadvantage the other.

65. CCSD breached its duty of good faith and fair dealing by performing in a manner that was unfaithful to the purpose of the Contract.

66. BBI's justified expectations under the Contract were denied when CCSD submitted its written notification to BBI attempting to prematurely terminate the Contract and when CCSD interfered with BBI's right to payment of commissions from HPN, thereby precluding BBI from being fairly compensated for the work performed.

67. As a proximate result of the actions of CCSD, BBI has suffered damages in excess of ten thousand dollars (\$10,000.00), a specific amount to be determined upon proof.

68. As a result of the conduct of CCSD as described herein, BBI has been required to retain the services of an attorney and is entitled to an award of reasonable attorney's fees and costs as an element of its damages.

THIRD CLAIM FOR RELIEF
(Unjust Enrichment – CCSD)

69. BBI incorporates the allegations contained in the paragraphs above, and below, as if fully set forth herein.

70. BBI expended considerable time and resources over an extended period of time to successfully negotiate and secure multiple-year insurance contracts with various service providers. Those insurance contracts enriched CCSD and its membership with rich health care benefits at significantly lower costs than historically offered by the insurers.

71. CCSD appreciated the benefit of BBI's services at the same time it denied BBI its

1 due compensation.

2 72. CCSD's conduct to effectively deny BBI due compensation for services provided
3 violates the fundamental principles of justice, equity and good conscience.

4 73. As a direct and proximate result of CCSD's actions, BBI has suffered damages in
5 excess of ten thousand dollars (\$10,000.00), a specific amount to be determined upon proof.

6 74. As a result of the conduct of CCSD as described herein, BBI has been required to
7 retain the services of an attorney and is entitled to an award of reasonable attorney's fees and
8 costs as an element of its damages.

9 **FOURTH CLAIM FOR RELIEF**
10 **(Intentional Interference with Existing Contractual Relations**
and Prospective Economic Advantage – CCSD)

11 75. BBI incorporates the allegations contained in the paragraphs above, and below, as
12 if fully set forth herein.

13 76. CCSD is clearly aware that under the Contract, BBI's only source of payment for
14 the services it has provided to CCSD is to receive payment in the form of commissions from
15 HPN.

16 77. CCSD intended to harm or disrupt BBI's relationship with HPN by failing to
17 acknowledge that CCSD was informed of the commission rate to be paid to BBI and that the
18 commission would be paid from premiums.

19 78. CCSD had no justification for its conduct, as CCSD agreed that BBI's sole
20 compensation for services provided pursuant to the Contract were to be received from
21 commissions and CCSD did not insist on any commission rate approval requirement as a term of
22 the Contract.

23 79. As a proximate result of CCSD's actions, BBI has suffered damages in excess of
24 ten thousand dollars (\$10,000.00), a specific amount to be determined upon proof.

25 80. As CCSD's conduct was willful, malicious and/or oppressive, punitive damages
26 should be awarded in an amount sufficient to deter such conduct in the future.

27 81. As a result of the conduct of CCSD as described herein, BBI has been required to
28 retain the services of an attorney and is entitled to an award reasonable attorney's fees and costs

1 as an element of damages.

2 **FIFTH CLAIM FOR RELIEF**
3 **(Intentional Interference with Existing Contractual Relations**
4 **and Prospective Economic Advantage – Cranor)**

5 82. BBI incorporates the allegations contained in the paragraphs above, and below, as
6 if fully set forth herein.

7 83. BBI is a party to a Contract with CCSD. Further, there exists a valid contract
8 between BBI and HPN regarding BBI's compensation for its services rendered.

9 84. Upon information and belief, Cranor is fully aware and has knowledge about
10 BBI's contractual relationship with CCSD as evident in a October 14, 2013 written
11 correspondence with CCSD Superintendent Skorkowsky; there, Cranor referenced CCSD's
12 "current contract with the broker (BBI)."

13 85. Upon information and belief, Cranor also discussed BBI in a closed door session
14 with Superintendent Skorkowsky. Upon information and belief, Cranor has taken action for the
15 purpose of disrupting BBI's contractual relationship with CCSD. Cranor expressed to the CCSD
16 Superintendent her interest in "sever[ing] the existing" contract.

17 86. Upon information and belief, Cranor acted in concert with CCSD (and possible
18 Roes and Doe Entities) for the purpose of severing any relationship with BBI that existed
19 inconsistent with Cranor's plan for a self-funded district-wide benefits plan that included the
20 CCEA.

21 87. Upon information and belief, Cranor knew that CCASA would be required to
22 terminate its contract with BBI in furtherance of her goal for a self-funded district-wide benefits
23 plan.

24 88. Upon further information and belief, CCASA's termination of its contract with
25 BBI was a result of Cranor's actions.

26 89. As a proximate result of Cranor's actions, BBI has suffered damages in excess of
27 ten thousand dollars (\$10,000.00), a specific amount to be determined upon proof.

28 90. As Cranor's conduct was willful, malicious and/or oppressive, punitive damages
should be awarded in an amount sufficient to deter such conduct in the future.

91. As a result of the conduct of Cranor as described herein, BBI has been required to retain the services of an attorney and is entitled to an award of reasonable attorney's fees and costs as an element of its damages.

SIXTH CLAIM FOR RELIEF (Declaratory Judgment- CCSD)

92. BBI incorporates the allegations contained in the paragraphs above, and below, as if fully set forth herein.

93. BBI contends that the Attempted Termination Notice violates Section 8 of the Contract.

94. An actual, justiciable, controversy has arisen between the parties by virtue of the Attempted Termination Notice.

95. BBI seeks and is entitled to a declaratory judgment that CCSD's attempt to terminate the Contract pursuant to the Attempted Termination Notice violates Section 8 of the Contract, as the effective date of the termination is December 31, 2016, not June 24, 2014.

96. A declaration of these rights and obligations is appropriate and will promote judicial efficiency.

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1 WHEREFORE, BBI prays for relief as follows

2 1. For an award of compensatory damages against Defendants, jointly and severally,
3 in an amount in excess of \$10,000, with a specific amount to be determined at the time of trial;

4 2. For an award of exemplary and punitive damages against Defendants, jointly and
5 severally, in an amount in excess of \$10,000, with a specific amount to be determined at the time
6 of trial.

7 3. For an award to BBI of its attorney's fees and costs,

8 4. For an award of pre-and post-judgment interest;

9 5. For the Court to construe the Contract under the Uniform Declaratory Relief Act
10 and decree that the Attempt to Terminate violates Section 8 of the Contract; and

11 6. For such other and further relief that the Court deems just and equitable.

12 Dated this 28th day of May 2014.

13 GORDON SILVER

14 

15 ERIKA PIKE TURNER

16 Nevada Bar No. 6454

17 ELIAS P. GEORGE

18 Nevada Bar No. 12379

19 3960 Howard Hughes Pkwy., 9th Floor

20 Las Vegas, Nevada 89169

21 (702) 796-5555

22 Attorneys for Plaintiff

EXHIBIT 1

EXHIBIT 1

**CONTRACT BETWEEN
CLARK COUNTY SCHOOL DISTRICT
And
BUSINESS BENEFITS, INC.**

THIS contract is between Business Benefits, Inc. (hereinafter called the "Supplier"), having an office at 9900 Covington Cross Drive, Suite 210, Las Vegas, Nevada 89144-6837, and the Clark County School District (hereinafter called "CCSD", "Owner" or "District"), having an office at 4212 Eucalyptus Avenue, Bldg. #7, Las Vegas, Nevada 89121. The Effective Date of this contract shall be January 31, 2011.

WHEREAS, the District has determined that the services of the Supplier herein specified are deemed both necessary, desirable, and in the best interests of the District.

WHEREAS, the Supplier represents that it is duly qualified and able to render the services as hereinafter described;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **Amendment:** No amendment or modification of the contract shall be deemed effective unless and until it is executed in writing by the parties hereto. The only officer with authority to execute an amendment to this contract is Jeff Weller, the Chief Financial Officer ("CFO") of the District.
2. **Applicable Law, Jurisdiction and Venue:** This contract shall be construed and interpreted according to the laws of the State of Nevada. The venue of any action brought hereunder shall be Clark County, Nevada.
3. **Assignments:** The Supplier shall neither assign, transfer nor delegate any rights, obligations or duties under the contract without the prior written consent of the District.
4. **Attorneys Fees:** The parties agree that in the event of a dispute, each party will bear its own cost of litigation and attorneys' fees.
5. **Compliance with Applicable Laws:** Supplier shall comply with all applicable statutes, laws, ordinances, codes, order rules, regulations, proclamations, and other governmental requirements, all the aforementioned provisions are incorporated by reference.
6. **Confidential Information** In the event the Supplier is furnished with or otherwise has access to confidential District information, while fulfilling its responsibilities under the terms of this agreement, the Supplier shall agree to hold such information in strict confidence and shall take all reasonable precautions to maintain the confidentiality of the information. The Supplier shall exercise the same degree of care and protection that would be exercised with respect to its own confidential information. The Supplier shall only use and access confidential information as necessary to fulfill its obligations under this contract, including without limitation providing confidential information to insurance carriers necessary for them to respond to requests for proposals. The Supplier shall not directly or indirectly disclose, sell, copy, distribute, reproduce, transfer, display, modify, create derivative works from, demonstrate, or allow any third party to have access to any of the District's confidential information which may include, but not be limited to: student academic records, student medical records, student photographs, budgetary information, etc.



7. **Conflict of Interest/Nepotism:** Pursuant to Regulation 3312, the District will not enter into a purchase transaction for an amount in excess of \$1,000 with any person related within the third degree of consanguinity or affinity to a member of the Board of School Trustees, or to a person acting as the authorizing official for the District, except as fully disclosed and authorized in advance. Authorizing official means a person who has final authority to administer budgets, or his/her designee.

The Supplier must disclose any relationship or affinity with a member of the Board of School Trustees or an authorizing official in writing to an Administrator of the Purchasing Department prior to executing this contract. Failure to properly disclose a relationship will result in termination of the contract and may jeopardize the Supplier's future business dealings/opportunities with the District.

8. **Contract Term:** This contract shall run concurrent with each of the insurance contracts held or acquired by CCSO during the term of this contract, or for eighteen (18) months from the Effective Date whichever is longer (the "Contract Term"). The Contract Term shall automatically renew at the end of the Contract Term for successive twelve (12) month periods (the "Extended Contract Term") unless revoked by either party hereto in writing not less than one hundred eighty (180) days prior to the end of the Contract Term or the Extended Contract Term as applicable. Notwithstanding the above, CCSO shall have the right to terminate this contract pursuant to the terms of Section 9 below.

9. **Contract Termination:** In the event the Supplier fails to substantially perform in accordance with the statement of work set forth on Attachment A and/or does not adhere to any of the provisions of this agreement, the District shall provide written notification to the Supplier detailing its performance deficiencies. Said notice shall provide the Supplier forty-five (45) calendar days to remedy its deficiencies. Should the Supplier fail to remedy the same within said period, the District shall have the unilateral right to terminate this agreement, without penalty.

10. **Controversies and Claims Subject to Arbitration:** In the event of a dispute Jeff Weiler, the CFO of the District will schedule a meeting with the Supplier to attempt to mediate and resolve any outstanding claims or disputes prior to initiating a request for arbitration (or commencing litigation). If through good faith efforts the matter is not resolved within fourteen (14) working days after the scheduled meeting, the parties may agree to continue mediation or may decide to proceed with the formal resolution process set forth herein.

Formal Dispute: In the event that mediation is unsuccessful, the controversy or claim arising out of or related to the Agreement, or the breach thereof, shall be settled by arbitration, unless the District, at its sole option, rejects arbitration by so notifying the Supplier. If the District rejects arbitration, the Supplier shall have thirty (30) days from the date of the receipt of the notice of rejection to commence litigation(s) by the service of a summons and complaint upon the District. Failure to effect service upon the District within said time period shall act as a bar to litigation of the claim, which was the subject of the request for arbitration. If the matter is arbitrated, the rules of the American Arbitration Association shall apply. Judgment on such awards may be entered by Nevada courts. The parties agree that no attorneys' fees may be awarded by any arbitrator to any party or sub-tier party that arise out of or relate to any and all claims and other disputes pertaining to the Agreement (in any case).

11. **Cooling Off Period:** The District may not enter into any contract, agreement, or consulting arrangement directly or indirectly with any employee or former employee for a period of one year from the date of termination of employment other than as a member of a bargaining unit or as a substitute employee, unless, (1) there is full disclosure of the nature and extent of the employee or former employee's interest in the matter, and (2) the contract is noticed and acted upon in an open session before the Trustees and approved by a majority of the Trustees.

12. **Entire Agreement:** This contract constitutes the entire agreement between the parties.

13. **Expenses:** In the event that the District agrees to pay the Supplier's expenses directly related to this work the following parameters shall apply: no overhead and/or profit shall be permitted. Supplier shall only receive reimbursement in amounts that are consistent with applicable travel guidelines established by District policy, regulations and procedures for its own employees. Reporting of expenses shall be submitted on an approved form along with invoices for all itemized charges.
14. **Extra Work:** The District reserves the right to request the expansion of the Supplier's scope of work to perform related services and/or issue amendments to commission an expanded scope of work for related services without invalidating the remaining terms and conditions of this contract; provided however, no extra work shall be required to Supplier without the written consent of the Supplier.
15. **Fee Schedule:** Supplier shall not invoice the District for its fees; provided however, Supplier may invoice the District for third party services (e.g., actuarial costs, legal fees) if such third party services have been approved in writing by the District.
16. **Gratuities:** In accordance with District Policy 3316, District employees are prohibited from accepting any gratuity (including food or beverages) from Supplier or prospective Suppliers.
17. **Headings:** Paragraph/section headings, numbers and alphabetical designations have been inserted for convenience of reference only. If there is any conflict between any such designations and the text of this agreement, the text shall take precedence.
18. **Indemnification:** Each of the parties hereto agree to protect, defend, indemnify and hold harmless the other party hereto, and its officers, employees and agents, from and against all liability, claims, demands and expenses, including court costs and attorney fees, on account of any injury, loss or damage, which arises out of the work to be performed under this contract, if such injury, loss or damage is due to the breach of this contract by such party, or any officer, employee or agent of such party.
19. **Insurance:** The Supplier shall be responsible for maintaining insurance coverage in force for the life of the contract. The insurance company(ies) must have an A.M. Best rating of A-VI or better and be licensed to write such insurance in the State of Nevada. Prior to commencement of services provide the District certificate(s) of insurance verifying the coverage. The insurance carrier shall give the District a thirty (30) days written advance notice of any termination, expiration or any and all changes in coverage. Deductibles and self-insurance retentions shall be declared in the certificate(s) of insurance. All deductibles and retentions are the sole responsibility of the Supplier to pay.

Certificates shall verify the following coverages:

Statutory Workers Compensation, and Employers Liability, with limits no less than \$1 million, and providing Clark County School District with a waiver of subrogation.

Commercial General Liability Insurance, including contractual liability in accordance with the indemnification requirements in above paragraph, and including bodily injury, personal injury, and property damage, with limits of at least \$1,000,000 per occurrence. The general liability insurance shall name the Clark County School District as an additional insured.

Professional Liability (Errors & Omissions) with minimum limits of at least \$1,000,000 per occurrence. The insurance required above may be provided under primary policies or by a combination of primary and excess policies.

a. Reference your certificate of insurance to the Clark County School District, Attention: Purchasing Department, 4212 Eucalyptus Avenue, Bldg. #7, Las Vegas, NV 89121, and indicate the PS number.

20. **Intellectual Property:** It is understood and agreed that the information, materials, processes, and advice used or provided by Supplier for the benefit of CCSD and/or for the purpose of acquiring insurance is considered highly proprietary and confidential by Supplier. It is intended only for the use of CCSD. Any dissemination, distribution or copy of aforementioned proprietary information is strictly prohibited.
21. **No Third Party Rights:** This contract is made for the benefit of the District and the Supplier, and not for any outside party.
22. **Non-Endorsement:** As a result of the selection of the Supplier to furnish services, the District is neither endorsing nor suggesting that the Supplier's service is the best or only solution. The Supplier may make reference to the District, in any literature, promotional material brochures, sales representations, or the like.
23. **Notices:** Any notice required to be given under this contract or any amendments thereof shall be sent by certified mail to the parties at the following addresses:
- To: Clark County School District
Attn: Jeff Weller, Chief Financial Officer
4212 Eucalyptus Ave., Bldg. #7
Las Vegas, Nevada 89121
Phone: (702) 799-5225 ext. 5462
- and
- To: Business Benefits, Inc.
Attn: Tim DeRosa, President
9900 Covington Cross Drive, Suite 204
Las Vegas, Nevada 89144
Phone: (702) 255-0092
24. **Records:** The books, records and documents of the Supplier relevant to this contract shall be subject to inspection, examination and/or making excerpts or transcripts by the District or its designee.
25. **Relationship:** The parties agree that the Supplier is an independent contractor; the Supplier is not a District employee. There shall be no withholding of income taxes by the District, Industrial Insurance coverage provided by the District, participation in group insurance plans which may be available to employees of the District, participation or contributions by either the Supplier or the District to the public employees retirement system, accumulation of vacation leave or sick leave, nor unemployment compensation coverage provided by the District.
26. **Scope of Work:** As CCSD's exclusive broker of record, the Supplier will provide the services set forth on Attachment "A." CCSD hereby agrees to execute broker of record letters substantially as set forth on Attachment "B" as it may be reasonably modified by the Supplier. All work shall be done in a good and workmanlike manner and in accordance with industry standards. All Supplier personnel assigned to this project shall be fully qualified and legally able to perform the work.
27. **Severability:** It is mutually agreed that all of the terms, covenants, provisions and agreements contained herein are severable and that, in the event any of them shall be held to be invalid by a competent court or arbitrator, this contract shall be interpreted as if such invalid term, covenant, provision or agreement were not contained herein.
28. **Subcontracting:** No work may be subcontracted without the prior written approval of the District, which shall not be unreasonably withheld.

29. Taxes: The District is a political subdivision of the State of Nevada and under the provisions of NRS 372.325 is exempt from payment of Sales and Use Tax (Tax Identification Number is 88-6000030). The prices bid must be net, exclusive of taxes.
30. Title and Risk of Loss: The title and risk of loss of material or service shall not pass to the District until material is delivered to the specified location, quantities are verified, and the material is inspected for damage or service is completed as specified.
31. Waiver: No waiver or any breach of this contract or any of the terms or conditions hereof shall be held to be a waiver of any other subsequent breach; nor shall any waiver be valid or binding unless the same shall be in writing and signed by the party alleged to have granted the waiver.
32. Warranty: Supplier warrants that the work shall be performed with that degree of skill, care, and judgment customarily accepted as sound and quality practice and procedure. Supplier further warrants that the work fulfills the requirements and intent of the entire contractual agreement inclusive of the Supplier's proposal. If the work fails to meet the aforementioned criteria and/or is in the reasonable judgment of the District to be inadequate the Supplier shall re-perform the work or portion that is unsatisfactory. The Supplier shall be liable for all costs and expenses incurred in the performance of corrective work and services, inclusive of travel, per diem, etc. The District agrees to meet with the Supplier, (if requested) on an as needed basis to monitor the effectiveness of ongoing work and notify the Supplier of deficiencies within a reasonable time of discovery.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

CLARK COUNTY SCHOOL DISTRICT

By: [Signature]

Print Name: Jeff Weiler

Title: Chief Financial Officer

Date: January 31, 2011

SUPPLIER: BUSINESS BENEFITS, INC.

Print Name: TIM DeROSA

Title: President

Date: JANUARY 31, 2011

"ATTACHMENT A"
BUSINESS BENEFITS, INC.
LIST OF SERVICES

As the Clark County School District's ("CCSD") exclusive broker of record for all of CCSD's Medical, Dental, Vision, Life/AD&D, Long Term Disability, Short Term Disability and Long Term Care Insurance, we add value to the program with services we provide and advice with regard to the plan design. We assist in, or directly perform the following services in connection with the Benefits program:

- Collaborate to identify the coverage and service needs of the clients' demographics. Examples:
 1. MA plans if population includes that demographic
 2. Advise on network size/network overlays
 3. In house administration or TPA
 4. Exchange model vs. traditional
- Identify the existence and availability of coverage's and services geared toward accommodating the unique needs of the clients demographics
 1. RFP process
- Collaborate to develop and apply criteria to evaluate the coverage's and services that would be advisable for inclusion in the benefits program.
- Seek out and identify carriers that offer comparable coverage's and services to those identified.
- Provide Carrier evaluation data i.e. financial ratings, membership, Network capacity and geographic coverage.
- Remain close to the insurers to pre-empt the "surprise" Summerlin closure that many people experienced.
- Assist client in understanding the constituent impact of the types of coverage's and services that have been identified and are available.
- Collaborate with client in developing project plans to evaluate and implement a program that offers the coverage's and services identified.

- Collaborate with client in developing and communications plan to roll-out a program that offers the coverage's and services available through all participating insurers and compare.
- Assist client in the implementation of the communications plan to roll-out the coverage's and services available through participating insurers and compare.
- Develop and submit a Request for Proposal (RFP) to insurance carriers for the coverage's and services 180 days prior to renewal. Require carrier participation for above.
- Assist client by reviewing and summarizing carrier responses to the Request for Proposal (RFP) requests for the coverage's and services identified and requested.
- Assist in ongoing Contract and amendment review. ACA and State mandates.
- Assist client by attending enrollment meetings, plan administration advice, monitoring, and member support, including assistance with accessing healthcare providers and claims resolution when needed.
- Billing Resolution, maintain records of all contracts, amendments, endorsements and renewals.
- Attend trustee/management meetings if applicable
- Assist client in insurer communication review/plan changes/mandates etc. Maintain relationships with carriers, to help expedite claims and management of care resolutions, such as step therapy, prior authorization issues and special consideration.
- Identifying special client benefits needs and services not provided by insurers. Assist in Early Retirement Reimbursement Program if required.
- Provide comprehensive HR advice, legislative and regulatory compliance tools, customized employer and employee communications via customized online portal as needed. Daily if necessary.
- Resources for COBRA, ARRA, HIPAA, HIPAA Privacy, Section 125 and FMLA questions.
- Ongoing compliance assistance with state and federal mandates.

EXHIBIT 2

EXHIBIT 2



**CLARK COUNTY
SCHOOL DISTRICT**

BOARD OF SCHOOL TRUSTEES

Carolyn Edwards, President
Lorraine Alderman, Vice President
Deanna L. Wright, Clerk
Erin E. Cranor, Member
Chris Garvey, Member
Patrice Tew, Member
Dr. Linda E. Young, Member

Pat Skorkowsky, Superintendent

Via Facsimile 383-8845
and U.S. Mail

December 31, 2013

Rory J. Reid, Esq.
Lionel Sawyer & Collins
300 S. Fourth Street, #1700
Las Vegas, NV 89101

Dear Mr. Reid:

Please consider this letter to be notification of how the District would like to proceed with its contractual relationship with Business Benefits, Inc.

In accordance with the Contract Between Clark County School District and Business Benefits, Inc., Section 8, the District provides this one hundred eighty (180) day written notice of its revocation of the automatic renewal of the Contract.

The District values the services performed by Business Benefits, Inc. and thanks Mr. DeRosa for his service to our employees. While the District is not interested in automatic renewal of this contract, the District is fully open to the possibility of continuing a business relationship with Business Benefits, Inc. under different contract terms.

Sincerely,

Carlos L. McDade
General Counsel

clm/eh

RECEIVED

JAN 08 2014

R.J.R.