Board of County Commissioners
Sumter County, Florida

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Website: http://sumtercountyfl.gov

RECEIVED
DEC 16 2010
BY: RM

MEMO

TO: ~~Lita Hart~~ Robert Washick

FROM: ~~Connie Webb~~ Lita Hart

DATE: December 15, 2010

RE: **Flexible Spending Account Agreement with PBA**

Attached for signature are two originals of the above document. Please return an original for the Board file once all parties have signed. Thanks.

Richard "Dick" Hoffman, Dist 1
(352) 689-4400
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Wildwood, FL 34785

Doug Gilpin, Dist 2
2nd Vice Chairman
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Don Burgess, Dist 3
Chairman
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Bradley S. Arnold,
County Administrator
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Gloria R. Hayward, Clerk & Auditor
(352) 793-0215
209 North Florida Street
Bushnell, FL 33513

County Attorney
The Hogan Law Firm
Post Office Box 485
Brooksville, Florida 34605

SUMTER COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY

SUBJECT: Rescinding approval of agreement for Flexible Spending Account (FSA) and Section 125 Plan Administration with Paychex and approving agreement with Professional Benefit Administrators, Inc. (PBA)

REQUESTED ACTION: **Board Approval of Agreement with PBA**

☐ Work Session (Report Only) **DATE OF MEETING:** December 14, 2010
☒ Regular Meeting ☐ Special Meeting

CONTRACT: ☒ N/A Vendor/Entity: PBA
Effective Date: December 14, 2010 Termination Date: December 31, 2013
Managing Division / Dept: Support Services/Risk Management

BUDGET IMPACT: Budgeted Item for FSA and Section 125 Plan Administration
☒ Annual **FUNDING SOURCE:** Health Fund and Employee Contributions
☐ Capital **EXPENDITURE ACCOUNT:** 501-596-591-4520 FSA Admin Fee
501-596-591-4510/4515 Health/DCAP Claim
☐ N/A

HISTORY/FACTS/ISSUES:
On November 23, 2010, the Board approved an agreement with Paychex for Flexible Spending Account (FSA) Plan Administration for 2011. However, there were several strike outs in the agreement recommended by the County Attorney that Paychex was not willing to accept and would not agree to the revised agreement. Although the next lowest quote was from AFLAC at $5,928, their references were not acceptable and due to concerns from past experience, staff recommends continuing the service agreement with Professional Benefit Administrators, Inc. (PBA) and rescinding approval of the agreement with Paychex.

The original proposal from PBA included a 3% increase above their current rates for the 2010 plan year along with annual increases of 3% with each renewal. PBA has agreed to maintain their current rates without the 3% increase (for an annual savings of $261.36 with an annual total cost of $9,234.72) and maintain these same rates for consecutive years with a three year renewal agreement.

APPROVED

DEC 14 2010

SERVICE AGREEMENT FOR THE SUMTER COUNTY BOCC FLEXIBLE SPENDING ACCOUNT

◆

BETWEEN SUMTER COUNTY BOCC AND PROFESSIONAL BENEFIT ADMINISTRATORS, INC.

◆

EFFECTIVE DECEMBER 14, 2010 FOR PLAN YEAR BEGINNING JANUARY 1, 2011 THROUGH DECEMBER 31, 2013

The Sumter County BOCC (the "Employer") has established the Sumter County Flexible Spending Account (FSA) Plan (the "Plan"). The Plan is designed to permit an Eligible Employee to elect the Medical FSA and/or DCAP Benefits, and to pay for those Benefits with Employee contributions. Employee contributions may be paid on a pre-tax Salary Reduction basis or with after-tax deductions, as permitted under the Plan for the applicable Benefit.

ARTICLE I
ADMINISTRATIVE RESPONSIBILITIES

1. PBA agrees to provide for the administration of the Sumter County BOCC Flexible Spending Account Plan and Section 125 in accordance with the scope of work outlined in the Request for Quote and in full compliance with applicable Internal Revenue Code regulations.

2. Employer will be Plan Administrator, and hereby designates and appoints PBA to perform the functions and duties necessary to prepare, implement and operate the Plan for the Plan Administrator.

3. Employer agrees to provide data to make necessary payroll deductions and assist PBA in implementing and operating the Plan as designed by the Plan Administrator.

4. PBA agrees to perform all the functions and duties essential in preparation and implementation of the Plan. PBA shall provide assistance in converting Employer's existing payroll system to accommodate the provisions of the Plan.

5. PBA shall advise Employer at least once a year, and more frequently, if required, of amendments to the Internal Revenue Code of 1986 affecting the Plan, and to provide proposed updates and revisions to the Plan. PBA agrees that on an annual basis, they shall review the Plan and related documentation, and, at no cost, update the Plan and related documentation.

6. PBA shall prepare and provide descriptive brochures, booklets, election forms, and all other documentation required to be provided to Plan participants during the initial enrollment.

7. PBA shall provide all accounting services, and shall provide, on an annual basis, summary reports to each participant and the Employer outlining that individual's equity rights, which may exist in the various programs which she or he has elected within the Plan.

8. PBA agrees to perform all the duties and functions essential to continuing operation of the Plan after its implementation, which will include annual program reviews and preparation of required governmental reports relating to the Plan.

9. PBA hereby acknowledges that forms, data, analyses, correspondence, computer-prepared material and any and all other information relating to the Plan, as provided by PBA, are for its own use, and agrees not to disclose such material or other details of the Plan to other parties, except (a) with permission of PBA, or (b) to any affiliate of PBA, or (c) to any affiliate of Employer, or (d) unless otherwise required by law.

10. In the event that Employer elects to use an Escrow account maintained by PBA at a bank or other institution of PBA's choosing for the payment of premiums or other fees due under the normal operation of the Plan, PBA shall not be entitled to interest earned, if any, on Employer funds deposited into such account.

11. PBA warrants that the Plan and the method of implementation prescribed by PBA satisfies current interpretation of IRS Regulations and State and Federal law.

ARTICLE II
FUNDING RESPONSIBILITIES

12. Employer agrees:

12.1 To maintain a minimum balance of $4,000 in their claims fund account (maintained by PBA) to cover the Debit Card costs.

12.2 Pay within 10 business days of the first and fifteenth of each month, as billed by PBA. This will include all FSA expenses: (1) Debit Card charges (2) Medical and DCAP checks.

ARTICLE III
TERMINATION OF FLEXIBLE SPENDING ACCOUNT PLAN SERVICES UNDER THIS AGREEMENT

13. The Employer, at its discretion, may terminate the portion of this Agreement relating to Plan administrative services for cause at any time. Cause for termination shall include but not be limited to any of the following reasons:

13.1. In the event PBA becomes bankrupt or insolvent or if PBA is suspended or restricted from performance by any Federal or State regulatory authority. Termination shall also be available to Employer in the event PBA is unable to perform as set forth in this Agreement.

13.2. PBA fails to meet with employees in advance of each salary determination period and provide timely information to Employer so that salary checks can be timely prepared with minimal additional administrative efforts or fail in other ways to facilitate administrative implementation within existing Employer resources, as may have been agreed upon.

13.3. Employer or any of its employees receive an inquiry from the IRS indicating the possibility that all or some portion of the Plan is not legally or validly implemented.

13.4. Employer is required, for any reason, to verify employee reimbursement claims.

13.5. Any portion of the Plan (or the type of plan adopted) is ruled illegal by statute, regulation or opinion of any governmental body or use of any element of the Plan is restricted.

14. Employer may elect to terminate the Plan without cause at any time, but if such termination occurs during the Plan Year following the date of this Agreement or the renewal of this Agreement, PBA shall be paid a lump sum equal to six (6) months' normal administration fee, and in return, will perform all normal calculations necessary to enable Employer to make any required reports and to adjust employee accounts so as to conform with pertinent regulations governing such terminations.

ARTICLE IV
NON-DISCRIMINATION SERVICES

15. PBA agrees to ensure that the Plan and any benefits, which are incorporated into the Plan, comply with documentation and employee notification requirements.

16. Employer designates and appoints PBA to perform the functions and duties necessary to prepare, implement and operate the monitoring and testing procedures required to demonstrate non-discrimination under the Plan.

17. PBA agrees to furnish documentation that, in the opinion of its counsel, meets the written requirements of the Code as amended.

18. PBA shall train the Employer's personnel in non-discrimination plan qualification and maintenance procedures as well as in the use of proprietary data collection software, if any such data base is required.

19. PBA shall assist in development of additional software needed to transfer data from existing personnel software system to the non-discrimination testing system. There shall be no additional cost to the Employer for any such conversion assistance.

20. PBA shall test all plans as needed for non-discrimination compliance using the data the Employer has compiled on the Data Collection Software.

21. PBA shall provide all reports and data needed for tax reports and audit files in pursuit of compliance with the Code.

22. Software support shall be provided jointly by the provider of this testing software and consultants. Any annual software maintenance fee will be waived by PBA so long as PBA is providing the comprehensive administrative support for Employer as described in this Agreement.

23. Employer acknowledges that PBA is not responsible for any penalties resulting from inaccurate reports produced from incorrect data supplied by Employer.

ARTICLE V
TERMINATION OF NON-DISCRIMINATION SERVICES UNDER THIS AGREEMENT

24. The Employer, at its discretion, may terminate the portion of this Agreement relating to non-discrimination services, at any time for any reason. Such causes may include, but shall not be limited to the following: In the event PBA becomes bankrupt or insolvent, or if PBA is suspended or restricted from performance by any Federal or State regulatory authority. Termination shall also occur in the event PBA is unable to perform as set forth in this Agreement.

ARTICLE VI
TERM - BASIS FOR RENEWAL OF SERVICE AGREEMENT

25. This Agreement shall remain in effect for the period of the current Plan Year, and except for reasons as specified below, or in Articles II and IV above, this Services Agreement shall automatically renew thereafter from year to year.

25.1. PBA offers to extend the existing contract for revised compensation; or,

25.2. PBA advises the Plan Administrator that it does not wish to continue to provide any administrative services to the Plan Administrator. In which case, notification of non-renewal shall be made to the Plan Administrator in writing, not less than sixty (60) days prior to the expiration of this Agreement; or,

25.3. The Employer, as Plan Administrator, advises PBA it no longer desires PBA to provide specific administrative services to the Plan Administrator. In which case, notification of non-renewal shall be made to the PBA in writing, not less than sixty (60) days prior to the expiration of this Agreement; or,

25.4. The Employer, as Plan Administrator, executes such renewal agreement or other services agreement replacing this Services Agreement.

In the case of non-renewal, the Plan Administrator shall have the right to receive all the Plan Administrator files and relevant documentation relative to the plans being administered. If the Plan Administrator elects to receive such information, then the Plan Administrator shall provide access to such materials to PBA if any suit or suits are filed against PBA with respect to the Plan Administrator's COBRA or other affected benefit accounts.

ARTICLE VII
MISCELLANEOUS PROVISIONS

26. PBA shall defend and indemnify Employer against any and all claims, loss, damages, expense and liability arising from PBA's failure to conform hereunder unless the same results from Employer's negligence.

27. Settlement of disputes shall be by binding arbitration between the Plan Administrator and PBA, in accordance with the rules and under the commercial arbitration rules of the American Arbitration Association.

28. Fee Changes:

28.1. Should the Plan Administrator make a modification of the Plan provisions which substantially increase or decrease the services to be rendered during the term of this agreement, the fees stated in this agreement may be adjusted as mutually agreed upon by the Plan Administrator and PBA.
Failure to reach agreement with respect to such fee adjustment shall be cause for termination of the portion of this contract relating to the administrative services in question by either party upon sixty (60) days' written notice of the disposition of pending matters to be concluded as provided herein.

29. This agreement will be construed according to the laws of the State of Florida, and all provisions hereof shall be administered according to the laws of such State. Venue and jurisdiction for any dispute arising from this Agreement shall only be in a court of competent jurisdiction in Sumter County, Florida.

30. PBA shall have the right to retain outside services at its cost and at no cost to Employer, whenever necessary, including administrative services, provided that such action will not relieve PBA of any obligations hereunder.

31. PBA shall be entitled to the following compensation:

31.1. A **$0.00** per eligible employee setup and consulting fee to be paid by the Employer in advance of survey and enrollment of the Plan.

31.2. Monthly administration fees are **$4.24** per participating employee through March 31, 2012 to allow for claims run-out and **$2.12** monthly fee per participating employee for the debit card through December

31, 2011. Such fees are to remain for a three year term ending December 31, 2013 after that period, fees will increase 3% each annual anniversary date of the Agreement.

31.3. No separate fee is being imposed for non-discrimination services described in this Agreement. In the event software becomes necessary for the determination of compliance under future legislation, Employer shall have the right to reject software offered by PBA. Any fee imposed for compliance software shall include necessary conversion software and services described earlier in this Agreement.

32. Nothing contained herein shall obligate Employer to utilize PBA as their agents or brokers in providing existing fringe benefits to employees.

33. PBA will maintain a $1,000,000.00 blanket fidelity bond and shall provide the same to Employer. In addition, PBA will provide proof of the following insurance with minimum limits as noted:

$1,000,000	General Liability
$2,000,000	Aggregate Liability
$2,000,000	Professional Liability or Errors and Omissions (E & O)
$100,000	Worker's Compensation Each Accident and Each Disease
$500,000	Workers Compensation Policy Limit

Certificates of Insurance naming the Sumter County BOCC as Additional Insured are required for all agreements and contracts for professional services provided for the county by entities outside other governmental agencies.

Insurance carriers must have a Financial Rating of A- or higher by A.M. Best; Certificates of Insurance must be provided by all entities other than governmental confirming the minimum limits as previously noted.

34. PBA agrees that their employees and/or agents shall treat and maintain as Employer's confidential property and shall not disclose to others or use during or subsequent to the termination of this Agreement, any information (including any technical information, employees, financing or costs) which may come within their knowledge or which may be developed by PBA, its employees or agents, in the performance of its obligations hereunder, without in each instance securing the prior written consent of Employer.

35. This Agreement constitutes the entire agreement and understanding between the parties hereto pertaining to the subject matter contained herein and cancels and supersedes any and all other prior and contemporaneous oral or written agreements, understandings, negotiations, or discussions. Any representation, promise, modification, or amendment to this Agreement shall not be binding on either party unless in writing, stating with specificity the proposed modification, amendment, promise, or representation and signed by the party to be bound. Neither party may assign any of its rights, duties, or obligations without the prior written consent of the other party. No modification or amendment of any provision of this Agreement shall be construed as a waiver, breach, or cancellation of any other provision. No waiver by either party with respect to any breach or default or of any right or remedy, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver is in writing and signed by the party to be bound.

36. Where other related administrative services are to be provided by PBA, amendments to this basic agreement, if any, are incorporated by reference. Any such amendments shall be subject to the terms and conditions of the basic agreement unless specified to the contrary.

SIGNATURE PAGE

SERVICE AGREEMENT FOR THE SUMTER COUNTY BOCC FLEXIBLE SPENDING ACCOUNT BETWEEN SUMTER COUNTY BOCC AND PROFESSIONAL BENEFIT ADMINISTRATORS, INC.

EFFECTIVE JANUARY 1, 2011 THROUGH DECEMBER 31, 2013

ATTEST: GLORIA R. HAYWARD
CLERK & AUDITOR

By_____
Connie Webb, Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
SUMTER COUNTY, FLORIDA

By_____
Don Burgess, Chairman

PROFESSIONAL BENEFIT ADMINISTRATORS, INC.

By_____
Representative

12/20/10
Date

Received
DEC 20 2010
Risk Management