

City of Fayetteville Staff Review Form

2015-0304

Legistar File ID

7/21/2015

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Michele Bechhold

6/25/2015

Human Resources /
Chief of Staff

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approve annual renewal of the City's contract with Gallagher Benefit Services, Inc. for benefit broker services.

Budget Impact:

1010.1220.5314.00		General	
Account Number		Fund	
N/A		Employee Benefits/Services	
Project Number		Project Title	
Budgeted Item?	Yes	Current Budget	\$ 103,066.00
		Funds Obligated	\$ 22,760.80
		Current Balance	\$ 80,305.20
Does item have a cost?	Yes	Item Cost	\$ 57,600.00
Budget Adjustment Attached?	No	Budget Adjustment	
		Remaining Budget	\$ 22,705.20

V20140710

Previous Ordinance or Resolution # _____

Original Contract Number: _____

Approval Date: _____

Comments:



CITY COUNCIL AGENDA MEMO

MEETING OF JULY 21, 2015

TO: Mayor and City Council
THRU: Don Marr, Chief of Staff
FROM: Michele Bechhold, Sr. HR Officer
DATE: June 25, 2015
SUBJECT: Approval of Annual Renewal of City's Benefit Broker Contract

RECOMMENDATION:

Staff recommends Council approve the City's annual renewal of its contract with Gallagher Benefit Services.

BACKGROUND:

The City's original contract was approved in 2012.

DISCUSSION:

Gallagher Benefit Services provides brokerage services, legislative compliance support and benefit management software to the City. Gallagher advises City staff in regard to federal regulations pertaining to benefit administration, including health care reform requirements under the Affordable Care Act.

The contract price and terms of service remain unchanged from last year.

BUDGET/STAFF IMPACT:

Funds are budgeted each year in the Human Resources program to cover the cost of this contract.

CONSULTING AGREEMENT

Annual Renewal

June, 2015

This Consulting Agreement (this "Agreement") is made by and between Gallagher Benefit Services, Inc., a Delaware corporation ("GBS"), and City of Fayetteville, Arkansas (the "Client").

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

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

1. Engagement

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

2. Term and Termination

The Effective Date of this Agreement is July 1, **2015**. The term of GBS' engagement under this Agreement (the "Consulting Period") will begin as of the Effective Date and will remain in effect for two (2) years from the Effective Date, subject to mutually agreed upon annual renewal by both parties. Either party may terminate this Agreement by giving the other party at least thirty (30) days written notice of its intent to terminate. In the event such termination is effective during the Consulting Period, Client shall be responsible to GBS for any services performed prior to the date of termination and GBS shall be responsible to Company to continue to provide services until the date of termination of this Agreement.

3. Services

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

4. Compensation

Subject to any changes as may be mutually agreed by the parties in writing and signed by their authorized representatives, GBS will receive, as compensation for its services under this Agreement, fees in the amount of \$ 57,600 per year, which amount will be billed in equal installments of \$4,800 and paid on a monthly basis.

GBS further agrees to fully disclose to Client, in writing, any business relations with or commissions it receives or plans on receiving from any of Client's current or prospective insurance carriers or other vendors. GBS will do so prior to making any recommendations to Client concerning Client doing or continuing doing business with such a carrier or vendor, so that Client will be apprised of any potential conflict of interest

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

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

5. *Performance and Scope*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) The Client is responsible for immediate payment of GBS' fees (if applicable) and payment of premiums for all insurance placed by GBS on Client's behalf. If any amount is not paid in full when due, including premium payments to insurance companies, that nonpayment will constitute a material breach of this Agreement that will allow GBS to immediately terminate this Agreement, at its option, with notice to the Client |

6. *Confidentiality*

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

(b) HIPAA Privacy. In spite of Sections 6(a) above, GBS and the Client will each comply with any prohibitions, restrictions, limitations, conditions, or other requirements to the extent they apply to them directly or indirectly pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulation concerning privacy of individually identifiable health information as set forth in 45 CFR Parts 160-164, as amended from time to time. Where required, the

Client, as a representative of the health plans and GBS will enter into a separate Business Associate Agreement.

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

7. *Indemnification Rights and Limitation of Liability*

Limitation of Liability. Notwithstanding any other term or provision of this Agreement, neither party shall be liable to the other for any exemplary, special indirect, incidental, consequential or punitive damages (including but not limited to lost profits) which may result from the other party's action or its failure to perform any term or condition of this Agreement or whether such liability is based upon tort, strict liability, breach of warranties, failure of essential purpose or otherwise and if advised of the possibility of such damages. This provision applies to the fullest extent permitted by applicable law.

8. *Notices*

Any notices, requests and other communications pursuant to this Agreement will be in writing and will be deemed to have been duly given, if delivered in person or by courier, telegraphed, or by facsimile transmission (provided that the sender received electronic confirmation of receipt by recipient) or sent by express, registered or certified mail, postage prepaid, addressed as follows:

If to the Client: City of Fayetteville, Arkansas
ATTN: Michele Bechhold
113 W. Mountain
Fayetteville, AR, 72701
(Fax:) (479) 718-7698 _____)

If to GBS: Gallagher Benefit Services, Inc.
300 S. Jefferson, Suite 600-N
Springfield, MO 65806
Attention: Jacob Salinas
(Fax: 417-881-8719)

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

9. *Miscellaneous*

(a) Severability. The various provisions and subprovisions of this Agreement are severable and if any provision or subprovision or part thereof is held to be unenforceable by any court of competent

jurisdiction, then such enforceability will not affect the validity or enforceability of the remaining provisions or subprovisions or parts thereof in this Agreement.

(b) Entire Agreement; Amendment. This Agreement, including all exhibits hereto, constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether oral or written, between the parties regarding the subject matter hereof. This Agreement may be modified or amended only by a written instrument executed by both parties.

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

(d) Jurisdiction and Venue. The parties agree that in the event of any legal dispute the governing jurisdiction and venue will be Washington County Circuit Court in Fayetteville, Arkansas for state court actions or the United States District Court, Western District, Arkansas, in Fayetteville, Arkansas for federal court actions.

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

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

(g) Survival of Provisions. Sections 2, 4, 6 and 7 will survive the termination of this Agreement.

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

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

City of Fayetteville, Arkansas

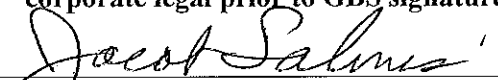
By: _____

Name: Lioneld Jordan

Title: Mayor

GALLAGHER BENEFIT SERVICES, INC.

- Branch Managers (Area Presidents) are the preferred signers on consulting or fee agreements, however, our current policy allows for producers who are Area AVPs to sign for GBS as well.
- **Any modifications must be approved AJG corporate legal prior to GBS signature.**

By: 

Name: Jacob Salinas

Title: Area Vice President

EXHIBIT A
SCOPE OF SERVICES

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

CONSULTING SERVICES PROVIDED ON AN "AS NEEDED" BASIS

RENEWAL ANALYSIS

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

PERIODIC PLAN FINANCIAL REPORTS (frequency to be mutually agreed upon):

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

ANNUAL FINANCIAL REPORTS (End of Year Accounting):

- Comparison of current costs to renewal costs
- Future plan costs projections
- Executive summary of program expenses
- Comparison of current costs to renewal costs
- Future plan costs projections
- Dollars saved by contract negotiation
- Percent of benefit dollars paid by employee
- Claims by size
- Physician visit details
- Benefits paid by type of service
- Plan funding/budget comparison
- Fixed expense comparison

LEGISLATIVE AND CORPORATE COMPLIANCE SUPPORT

- Provide legislative updates, including Technical Bulletins and Directions newsletters
- Evaluate plan design to assist with compliance with state and federal regulations
- Review benefit plan documents, including summary plan descriptions, contracts, employee summaries, and policies/procedures
- Conduct periodic seminars on regulatory issues
 - Assist with the review and evaluation of COBRA and HIPAA compliance procedures
- Provide general information and guidance to assist with compliance with ERISA, FMLA, USERRA, Medicare Part D and other Federal legislation that directly affects the administration of plan benefits
- Provide template or sample compliance notices, certificates of creditable coverage and enrollment forms as reasonably requested by Company

CARRIER MARKETING AND NEGOTIATIONS, AS DIRECTED BY CLIENT

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

DAY TO DAY ADMINISTRATIVE SERVICES

EMPLOYEE EDUCATION PROGRAMS

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

COMMUNICATION MATERIALS

- Assist with the drafting and distribution of Open Enrollment-New Member Orientation summary information and any other communications pertaining to the health and welfare program
- Provide annual open enrollment guidance and employee meeting materials
- Assist with marketing and oversight of Customized Enrollment Materials (if elected)

- Assist with participant wellness initiatives, as directed by Company

BENEFIT ADMINISTRATION ASSESSMENT

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

□ BENEFITS ADMINISTRATION SOFTWARE:

- Gallagher agrees to enter into an Agreement with PlanSource/Connect2MyBenefits software vendor to provide Client with benefits software services, to commence May 16, 2012 and “go live” July 1, 2012.
- Client, as third party beneficiary of said agreement, will be responsible for reimbursing Gallagher on a monthly basis based on \$2.45 per Employee per Month, pro-rated for partial months such as May, 2012.

Additional terms and details concerning the PlanSource/Connect2Mybenefits software as agreed upon are referenced in attached Appendix “C”.

□ MARKET BENCHMARKING STUDIES:

- Local Area Surveys
- Industry Surveys

□ Benefit Plan Design (or Redesign)

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

EXHIBIT B
COMPENSATION DISCLOSURE STATEMENT

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

Line of Coverage	Insurance Company	Effective Date	Commission ¹ / Supplemental Compensation ²	Direct Fees ³	Wholesaler, MGU, or Intermediary	Owned by AJG/GBS
Consulting Agreement	Gallagher Benefit Services	7/1/2015	N/A	\$57,600	N/A	N/A

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

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

³ Direct Fees include compensation to GBS paid for directly by the plan sponsor.

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

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

It should also be noted that:

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

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

For more information on Gallagher's compensation arrangements, please visit www.ajg.com/compensation. In the event a client wishes to register a formal complaint regarding compensation Gallagher receives, please send an e-mail to Compensation.Complaints@ajg.com or send a letter to: AVC Compliance Officer, c/o Internal Audit Department, Arthur J. Gallagher & Co., Two Pierce Place, Itasca, IL 60143.

APPENDIX C

PlanSource's Connect2MyBenefits Platform

GBS agrees to enter into an agreement with PlanSource for a Connect2MyBenefits software platform to be built and serviced on an ongoing basis for Client, as follows:

- Client will be billed by GBS for the Connect2Mybenefits service on a monthly basis, and shall pay within 30 days of receipt of each invoice.
- Client will be billed at a rate of \$2.45 per Employee per Month for its employees classified as Active, Statutory Insured, and COBRA. The current number are 685 Active employees, 20 Statutory Insured, and 8 COBRA. This shall constitute the entire amount(s) billed to Client and includes, but is not limited to, PlanSource providing implementation, building the platform for Client, training, ongoing customer service (provided directly to Client's authorized representatives, without the necessity of default communications occurring only with or through GBS), four electronic Standard Format (Excel) feeds to Client's carriers/vendors, troubleshooting, use of the software, annual programming, administrative logins, employee logins, and the services referenced in this Appendix.
- Client shall receive at least 60 days' written notice from GBS prior to any proposed price changes for the PlanSource services or changes in PlanSource's scope of services, including PlanSource terminating its services to Client.
- Client shall provide GBS with at least 60 days' written notice prior to any proposed changes in Client's utilization of PlanSource services, including Client terminating its use of PlanSource benefits software.
- PlanSource shall:
 - Conduct kick-off strategy meeting to define and plan implementation and training timeline.
 - Develop project timeline in collaboration with Client (updated weekly during conference calls).
 - Configure employer benefit plan design.
 - Configure the system for basic life events (default business rules).
 - Setup rules for each eligibility group.
 - Setup rule for each plan type.
 - Configure scrub, and load most recent employee elections, dependent and premium information for passive enrollments.
- Make PlanSource HR site available to employees throughout the plan year that includes:
 - Documents such as Benefit Summaries, SPDs, and Forms
 - Links/URLs to carriers
 - FAQs and Email Links to HR

- Contact information
- Provide employee access to online benefit Homepage and employee benefits confirmation statement
- Provide new hire access to web enrollment
- Provide employee access to employee self-service life events elections (if requested by Client)
- Provide employee access to employee self-service annual enrollment.
- Provide HR access to real-time online administrative service features
- Provide HR access to online reporting functions.
- Provide links to electronic EOI questionnaires where required by carriers for life or disability coverage requests.
- Send recurring eligibility data feed to 3rd party carrier systems
- Send recurring deduction codes to Client's payroll system (if requested).
- Create 834 data interfaces – Configuration of carrier export file based on carrier requirements and ability to accept data
- Create data feeds in PlanSource Standard Format
- Custom create non-834 data interfaces
- Conduct Annual Renewal Configurations (for each new carrier or change in data feed requirements at renewal).
- Provide Standard Feed formats (Excel).