



Board of County Commissioners - Staff Report

Meeting Date: December 6, 2016
Submitting Dept: Human Resources

Presenter: Julianne Fries, Director of HR
Subject: DCFSA ASA for Benefit Year 2017

Statement / Purpose:

Consideration of the Allegiance Administrative Services Agreement (ASA) for Dependent Care Flexible Spending Account.

Background / Description (Pros & Cons):

The ASA outlines the responsibilities of Allegiance as the third party administrator of the Dependent Care Flexible Spending Account (DCFSA) Benefit Plan. This agreement also outlines the responsibilities of Teton County as the flexible benefits plan administrator. The purpose of maintaining the DCFSA is to allow eligible employees to use pre-tax dollars for the costs associated with childcare services for children under the age of 13 years or adults that may be living with them whom they claim as a tax dependent. By providing this benefit, it allows eligible employees to reduce their taxable income and take home a larger portion of their pay check. The annual maximum contribution amount for employees who are married filing jointly is \$5,000, if they are single it is \$2,500; these limits are established by the IRS.

With a DCFSA, the dollars do not rollover from year to year or from one employer to another; any unused portion at the end of the year is forfeited.

Stakeholder Analysis & Involvement:

none

Fiscal Impact:

Allegiance has provided these services to Teton County since 2013. The administrative service fees will remain flat for the fifth year in a row. Cost to administer the Dependent Childcare Flexible Spending Account remain at \$4.75/participant per month and an annual re-enrollment fee of \$250.

Staff Impact:

None

Legal Review:

K. Gingery has reviewed and approved the agreement.

Staff Input / Recommendation:

Staff recommends approving the Allegiance DCFSA Administrative Services Agreement as presented.

Attachments:

The Administrative Services Agreement, Appendix A, B, C, and D are attached.

Suggested Motion:

I move to approve the 2017 Allegiance Administrative Services Agreement for the Dependent Care Flexible Spending Account Benefit Plan, to be effective from January 1, 2017 and ending December 31, 2017.

NOTICE: THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO THE MONTANA UNIFORM ARBITRATION ACT (§27-5-111 et seq. MCA)

**ADMINISTRATIVE SERVICES AGREEMENT
FLEXIBLE BENEFITS PLAN**

This Agreement, effective for the period beginning January 1, 2017, and ending December 31, 2017, and continuing thereafter, for additional successive twelve (12) month periods, as provided by this Agreement and as long as both parties mutually agree, is entered into by Teton County, a legal entity (hereinafter referred to as the "Plan Sponsor") and Allegiance Benefit Plan Management, Inc., a Corporation duly organized and existing under the laws of the State of Montana (hereinafter referred to as the "TPA").

WHEREAS, the Plan Sponsor sponsors a Flexible Benefits Plan (hereinafter referred to as the FLEX Plan) which is a "cafeteria plan" within the meaning of Section 125 of the Internal Revenue Code of 1986 as amended, and regulations issued thereunder, for all employees participating in the Plan Sponsor's health or welfare benefits plan; and

WHEREAS, the Plan Sponsor wishes to contract with an independent third party administrator to perform certain supervisory services with respect to the FLEX Plan and to process reimbursement requests submitted under the FLEX Plan; and

WHEREAS, the TPA desires to contract with the Plan Sponsor to provide such supervisory and reimbursement services with respect to the FLEX Plan, as set forth below; and

WHEREAS, the parties wish to enter into this Agreement to set forth the obligations and duties of both parties with regard to such supervisory and reimbursement services.

THEREFORE, in consideration of the promises and mutual covenants contained herein, the Plan Sponsor and the TPA enter in to this Agreement for administrative services for the FLEX Plan.

SECTION 1. DEFINITIONS

For the purposes of this Agreement the following words and phrases have the meanings set forth below, unless the context clearly indicates otherwise and, wherever appropriate, the singular will include the plural and the plural will include the singular

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| 1.1 | "Calendar Year" means January 1 through December 31 of the same year. | 1.7 | "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as it may be amended from time to time, and all regulations applicable thereto. |
| 1.2 | "COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, together with all regulations applicable thereto. | 1.8 | "Participant" is any employee, retiree or COBRA beneficiary who is properly enrolled for and entitled to participate in the FLEX Plan and who submits expenses for reimbursement from the FLEX Plan. |
| 1.3 | "Covered Services" means the care, treatments, services or supplies described in the Plan Document as eligible for reimbursement from the FLEX Plan. | 1.9 | "Plan" means the Flexible Benefits Plan for the Employees of Teton County, which is the subject of this Agreement and which the Plan Sponsor has established pursuant to the Plan Document. |
| 1.4 | "Employer" means the Plan Sponsor and any successor organization or affiliate of such Employer which assumes the obligations of the FLEX Plan and this Agreement. | 1.10 | "Plan Administrator" means the Employer and/or entity designated by the Plan Sponsor which is responsible to manage the day-to-day functions of the FLEX Plan and make all discretionary decisions regarding Plan terms and managing Plan assets. The Plan Administrator may employ persons or firms to process Reimbursement Requests and perform other Plan-connected services. For the purposes of the Employee Retirement Income Security Act of 1974, as amended, and any applicable state legislation of a similar nature, the Employer will be deemed to be the Plan Administrator of the FLEX Plan unless by action of the Board of Directors or equivalent authority the Employer designates in writing an individual or committee to act as Plan Administrator. |
| 1.5 | "ERISA" means the Employee Retirement Income Security Act of 1974, as amended, together with all regulations applicable thereto. | 1.11 | "Plan Document" means the instrument or instruments that set forth and govern the duties of the Plan Sponsor and eligibility and benefit provisions of the FLEX Plan which provide for before-tax payment of premium for the |
| 1.6 | "Fee Schedule" means the listing of fees or charges for services provided under this Agreement. This Fee Schedule may be modified from time to time in writing by the mutual agreement of the parties. The Fee Schedule is contained in Appendix A and is a part of this Agreement. | | |

employee health and welfare plan and the reimbursement of Covered Services.

- 1.12 "Plan Sponsor" will be as defined in Section 3(16)(A) of ERISA and means the entity and any successor entity or organization, which is responsible for and which has created, established and maintains an employee health and welfare benefit plan and/or FLEX Plan for the benefit of a group or groups of employees. Plan Sponsor includes any successor organization or affiliate of such Plan Sponsor which assumes the obligations of the FLEX Plan and this Agreement.
- 1.13 "Plan Year" means the twelve-month period of time beginning with the effective date of the FLEX Plan as specified in the Plan Document.
- 1.14 "Reimbursement Account" means an account utilized for reimbursement for Covered Services. For purposes of this Agreement, the Reimbursement Account means the funds deposited for before-tax payment of premium for the employee health and welfare benefits plan and for Reimbursement Requests.
- 1.15 "Reimbursement Request" means a request by a Participant for reimbursement for Covered Services from the FLEX Plan.
- 1.16 "Summary Plan Description" means the document required to be provided under Sec. 102 of ERISA that describes the terms and conditions under which the FLEX Plan operates.
- 1.17 "Working Day" will mean a regular business day that is not a recognized federal or banking holiday, and specifically excluding any Saturday or Sunday.

SECTION 2. RELATIONSHIP OF THE PARTIES

- 2.1 The Plan Sponsor delegates to the TPA only those powers and responsibilities with respect to development, maintenance and administration of the FLEX Plan that are specifically enumerated in this Agreement. Any function not specifically delegated to and assumed by the TPA in writing pursuant to this Agreement will remain the sole responsibility of the Plan Sponsor. The Plan Sponsor retains the responsibility for any obligations under the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, as amended, and obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) unless this Agreement and the Fee Schedule in Appendix A expressly include provisions and fees for COBRA or HIPAA administrative services by the TPA.
- 2.2 The TPA is acting as an independent contractor for purposes of this Agreement. As such, the TPA is not a fiduciary and does not assume any liability or responsibility for any breach of duty or act of omission by Plan Sponsor.
- 2.3 The parties acknowledge that:

- A. This is a contract for administrative services only as specifically set forth herein; and
- B. The TPA will not be obligated to disburse more in payment for Reimbursement Requests or other obligations arising under the FLEX Plan than the Plan Sponsor will have made available in the Reimbursement Account; and
- C. This Agreement will not be deemed a contract of insurance under any laws or regulations. The TPA does not insure, guarantee or underwrite the liability of the Plan Sponsor under the FLEX Plan. The Plan Sponsor has total responsibility for payment of before-tax premium for the employee health and welfare benefits plan, for Reimbursement Requests under the FLEX Plan and all expenses incidental to the FLEX Plan.

2.4 Except as specifically set forth herein, this Agreement will inure to the benefit of and be binding upon the parties hereto and their respective legal successors provided, however, neither party may assign this Agreement without the prior written consent of the other, which consent will not be unreasonably withheld. There are no intended or unintended third-party beneficiaries to this Agreement, and this Agreement will not be construed in any manner as to create same.

2.5 Any dispute as to the applicability of this Agreement between the parties or the respective rights and obligations of the parties under this Agreement which the parties are unable to resolve, will be determined by arbitration in Missoula, Montana. Either party may submit the dispute to arbitration before a single arbitrator and in accordance with the rules of the American Arbitration Association. The party that does not substantially prevail will pay the cost of such arbitration. The decision of the arbitrator will be final and binding upon the parties and may be filed with any court of competent jurisdiction and enforced as judgment of that court.

2.6 It is agreed by the parties to this Agreement that any cause of action brought by either party to this contract must be made within two (2) years of the date of occurrence of any alleged breach, infraction or dispute, or within two (2) years of the termination date of this Agreement, whichever occurs first. All parties agree this is a voluntary waiver by parties regardless of any other applicable state or federal statute of limitations.

2.7 The TPA agrees to be duly licensed as a Third Party Administrator to the extent required under applicable law and agrees to maintain such licensure throughout the term of this Agreement.

2.8 The TPA may secure the services of actuaries, computer service firms, insurance consultants, legal counsel, accountants and any other entities that it deems necessary in performing its duties under this Agreement. At the discretion of the TPA such services

may be performed directly by it, wholly or in part, through a subsidiary or affiliate of the TPA or under an agreement with an organization, agent, advisor or other person of its choosing. Any such services resulting in a charge not agreed to in the Fee Schedule must first be authorized in writing by the Plan Sponsor. The TPA will be entitled to rely, without investigation or inquiry, upon any written or oral information or communication of the Plan Sponsor or Agents, including but not limited to: Consultants, Actuaries, Attorneys, Accountants, auditors, or Brokers retained by the Plan Sponsor.

2.9 ALLEGIANCE will not be bound by any notice, directive or request unless and until it is received in writing at the mailing address or fax number shown below:

2806 SOUTH GARFIELD STREET
MISSOULA, MT 59801
(406) 523-3149

Neither Plan Sponsor nor Plan Administrator will be bound by any written notice, directive or request unless and until it is received in writing at its primary place of business or fax number shown below:

200 SOUTH WILLOW
P. O. BOX 1727
JACKSON, WY 83001
(307) 733-4451

2.10 The parties to this Agreement acknowledge that the TPA will have no obligation of any sort, express or implied, in this contract to provide Plan Sponsor with any proprietary, confidential or trade secret information of TPA. The Plan Sponsor is entitled to its claims information and other information which the Plan Sponsor and Plan Administrator are required to retain by applicable law, but any proprietary, confidential or trade secret information of the TPA shall be removed from such information. The TPA will not disclose proprietary, confidential or trade secret information to the Plan Sponsor without the Plan Sponsor first executing a legally binding Confidentiality and Non-Disclosure Agreement regarding such information.

SECTION 3. THE TPA'S RESPONSIBILITIES

The TPA will provide the following FLEX Plan Supervisory and Reimbursement Services for the Plan Sponsor. The fees for these services are stated in the Fee Schedule in Appendix A.

SUPERVISORY SERVICES

3.1 The TPA will assist Plan Sponsor in developing and designing the FLEX Plan and any amendments, revisions or modifications, subject to approval by Plan Sponsor or Plan Sponsor's attorney.

3.2 The TPA will maintain FLEX Plan records based on eligibility information submitted by the Plan Sponsor as to the dates on which a Participant's eligibility

commences and terminates, maintain Plan records of Plan elections applicable to each Participant based on information submitted by the Plan Sponsor, and maintain Plan records regarding Reimbursement Requests, denials of Reimbursement Requests, and Reimbursement Requests pending.

3.3 Upon request of Plan Sponsor, TPA will perform 25% Key Employee Concentration discrimination testing for the Plan referenced in this Agreement. However, by providing these services, TPA is not acting as Plan Sponsor's legal counsel or tax advisor. All services provided by TPA under this paragraph should be reviewed by Plan Sponsor's legal counsel and tax advisors.

3.4 The TPA will perform the following specific services for Plan Sponsor as requested:

- A. Project estimated costs relating to the FLEX Plan.
- B. Draft and prepare FLEX Summary Plan Description for review and approval by Sponsor's legal counsel.
- C. Assist with the introduction of Plan provisions and procedures to Sponsor's electing employees through materials and meetings arranged by agreement between Sponsor and the TPA.
- D. Prepare reports as required by law for the financial management and administrative control of the FLEX Plan for use by Sponsor.
- E. Provide to Plan Sponsor, upon request, a copy of all Plan documents which employees are entitled to examine under ERISA and any other related documents. Said documents will be limited to insurance contracts, if any, and documents required to be filed with the U. S. Department of Labor. There will be a \$0.15 per page copy charge assessed for all copies produced hereunder.

3.5 The Employer and not the TPA, is responsible for preparing and filing the IRS Form 5500 on or before the due date. The TPA will provide the necessary information to enable the Plan Sponsor to complete and file an IRS form 5500 annual report, if requested, at least thirty (30) days prior to the date such filings are due.

REIMBURSEMENT PROCESSING SERVICES

3.6 As specified under the FLEX Plan, the TPA will:

- A. Promptly process and prepare disbursement to pay valid Reimbursement Requests submitted by participating employees.

- B. Provide a proper accounting and billing to Plan Sponsor of Reimbursement Requests paid.
- C. Maintain current and complete records and files of Reimbursement Requests and payments for each participating employee according to the TPA's current practices.
- 3.7 The TPA agrees to be duly licensed as a Third Party Administrator to the extent required under applicable law and agrees to maintain such licensure throughout the term of this Agreement.
- 3.8 The TPA will possess throughout the term of this Agreement an in-force fidelity bond or other insurance as may be required by state and federal laws for the protection of its clients. Additionally, the TPA agrees to comply with any state or federal statutes or regulations regarding its operations.
- 3.9 The TPA will process enrollment forms for Participants in the FLEX Plan and answer enrollment inquiries; create and maintain enrollment records for Participants and distribute FLEX Plan materials supplied by the Plan Sponsor to new Plan Participants.
- 3.10 The TPA will process Reimbursement Requests incurred by Participants according to the terms of the Plan Document as construed by the Plan Sponsor. The TPA will establish and maintain usual and customary Reimbursement Request review procedures within the usual standard of care in the TPA industry. The TPA will take reasonable measures and precautions to prevent the reimbursement of improper requests. The TPA will not be liable for fraud, misrepresentation or errors by any Participant or for errors in Reimbursements made to Participants in good faith.
- When all necessary documents and Reimbursement Request form information have been received and the Reimbursement Request has been adjudicated, a Reimbursement check or draft will be remitted on the next Reimbursement disbursement date provided that the Plan Sponsor has provided funds for such Reimbursement. All Reimbursement Requests will remain in a processed but pending status until funded by the Plan Sponsor.
- Customer Service Representatives of the TPA will inform any Participant who inquires about any Reimbursement Request which is pending for lack of funds that such Reimbursement Request has been received and processed and is pending receipt of funds. No further explanation will be required of the TPA by the Plan Sponsor under such circumstances.
- 3.11 The TPA will notify Participants in writing of ineligible Reimbursement Requests received.
- 3.12 The TPA will process, issue, and distribute Reimbursement checks or drafts as instructed by the Plan Sponsor to Participants. The TPA will notify the Plan Sponsor of the Reimbursement Request amount required to be deposited to the Reimbursement Account to pay the Reimbursement Requests as they occur.
- 3.13 The TPA will maintain local telephone service and toll-free telephone lines for inquiries made by Participants regarding the status of their Reimbursement Requests. The TPA may record such telephone calls.
- 3.14 The TPA will respond to Reimbursement Request inquiries by a Participant, the estate of a Participant, an authorized member of a Participant's family unit, or the Participant's authorized legal representative.
- 3.15 The TPA will maintain information that identifies a Participant in a confidential manner. The TPA agrees to take all reasonable precautions to prevent disclosure or the use of premium payment information or Reimbursement Request information for a purpose unrelated to the administration of the FLEX Plan.
- 3.16 Plan Sponsor may provide its own Plan Document and Summary Plan Description at its expense, used by TPA for review and approval by Plan Sponsor's legal counsel, subject to review and approval by TPA.
- 3.17 The TPA will maintain a Reimbursement Request file on every Reimbursement Request reported to it by the Participants. Copies of such records will be made available to the Plan Sponsor during a regularly scheduled Working Day at the office of the TPA for consultation, review, and audit upon advance notice of a minimum of fourteen (14) Working Days.
- The Plan Sponsor will pay for any audit made at its request. A fee of fifteen cents (\$.15) per photo copy will be paid by the Plan Sponsor or Plan auditor on behalf of the Plan Sponsor for any Reimbursement Request or other record. The TPA will charge an hourly fee of \$100 for executive or professional time, \$50 per hour for department manager time and \$25 per hour for clerical time spent in cooperation with such consultation, review and audit.
- 3.18 The TPA will, upon termination of this Agreement, save all records at the TPA's principal administrative office. Reimbursement request files will be kept in secure storage facilities for at least six (6) years following the termination of a Plan Year or as required by ERISA. Copies of any materials in storage will be available to Plan Sponsor for a copy fee of fifteen cents (\$.15) per page copied plus a retrieval fee of ten dollars (\$10.00) per box or CD ROM diskette accessed. At the end of the six-(6) year period, the TPA will destroy all records.
- 3.19 The TPA will perform special Reimbursement Request history research projects upon request by the Plan Sponsor. A separate fee may be required depending upon the complexity of such request.
- 3.20 The TPA will provide non-proprietary information and documents as requested by the Plan Sponsor to brokers and agents designated by the Plan Sponsor, provided, however, if the Plan Sponsor has entered into an agent

of record agreement with any agent or broker, and the TPA has notice of the same, the TPA will not be required to provide any information or documentation to other agents or brokers unless or until Plan Sponsor has terminated the agent of record agreement and notified the agent of record of the termination. The TPA will have the express right to contact any agent of record to verify the agent of record agreement has been terminated.

3.21 The TPA will have no obligation whatsoever with regard to the Plan Sponsor's obligations and responsibilities under the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, as amended, or the Health Insurance Portability and Accountability Act (HIPAA) of 1996, unless specifically requested by Plan Sponsor, in which case TPA's responsibilities for COBRA administration are stated in the COBRA Appendix attached hereto and made a part hereof by this reference.

3.22 Upon request TPA will provide certain limited bank account management services for the reimbursement Account, for the fees and upon the conditions set out in Reimbursement Account Management Services Appendix attached hereto and made a part hereof by this reference.

SECTION 4. PLAN SPONSOR OBLIGATIONS

4.1 Plan Sponsor will furnish to the TPA the following reports and information to allow effective performance by the TPA:

A. Certification of participation in the FLEX Plan and such other information as may be necessary for processing Reimbursement Requests.

B. Prompt reconciliation of:

(1) The itemized monthly billing provided by the TPA listing employees covered under the FLEX Plan, and;

(2) The amount of premiums and contributions elected by each participating employee for the billing period.

In the event the Plan Sponsor does not reconcile the contribution listing, the TPA will reconcile the contribution listing at the rates shown in the Fee Schedule in Appendix A.

4.2 Plan Sponsor will give notice of the establishment of the FLEX Plan to its employees and will be responsible for distributing copies of the Summary Plan Description to participating employees.

4.3 Plan Sponsor will maintain current and accurate Plan eligibility and participation records, verify Participant eligibility and submit this information if requested by the

TPA, to the TPA at its designated mailing address.

This information will be provided in a format acceptable to the TPA and will include the following for each Participant: name and address, Social Security number, date of birth, type of participation, sex, relationship to employee, changes in participation, date participation begins or ends, and any other information necessary to determine eligibility and participation levels under the FLEX Plan.

Plan Sponsor assumes the responsibility for the erroneous disbursement of reimbursements by the TPA in the event of error or neglect on the Plan Sponsor or Employer's part of providing eligibility and participation information to the TPA, including but not limited to, failure to give timely notification of ineligibility or termination of a former Participant.

4.4 Plan Sponsor will resolve all Plan ambiguities and disputes relating to the eligibility of a Participant, Plan participation, denial of Reimbursement Requests or decisions regarding appeal, or denial of Reimbursement Requests, or any other Plan interpretation questions. The Plan Sponsor will respond to any written request made by the TPA within ten (10) working days.

The TPA will administer and process Reimbursement Requests in accordance with this Agreement if the Plan Document and Summary Plan Description are clear and unambiguous as to the validity of the Reimbursement Requests and the Participants' eligibility for participation under the FLEX Plan, but will have no discretionary authority to interpret the FLEX Plan or adjudicate Reimbursement Requests. If processing a Reimbursement Request requires interpretation of ambiguous Plan language, and the Plan Sponsor has not previously indicated to the TPA the proper interpretation of the language, then the Plan Sponsor will be responsible for resolving the ambiguity or any other dispute.

The Plan Sponsor's decision as to any Reimbursement Request (whether or not it involves a Plan ambiguity or other dispute) will be final and binding unless modified or reversed by a court or regulatory agency having jurisdiction over such matter.

4.5 Plan Sponsor will prospectively fund the Reimbursement Accounts each pay period by depositing funds deducted from Participants' wages into the Reimbursement Account. If additional funding is required to pay claims, Plan Sponsor shall advance funds in a timely manner, but in no event later than thirty (30) days after notice from the TPA of the required funding amount, so pended claims can be released.

4.6 Plan Sponsor will not demand or require the TPA, under any circumstances, to issue checks or drafts for Reimbursement Requests or any other costs arising out of the subject matter of this Agreement, unless the Plan Sponsor has so authorized and has previously deposited sufficient funds to cover such payment(s).

- 4.7 Plan Sponsor will provide the TPA with copies of any and all revisions or changes to the FLEX Plan within five (5) Working Days of the effective date of the changes.
- 4.8 Plan Sponsor will provide, and timely distribute, all notices and information required to be given to Participants, maintain and operate the FLEX Plan in accordance with applicable law, maintain all record keeping, and file all forms relative thereto pursuant to any federal, state, or local law, unless this Agreement specifically assigns such duties to the TPA.
- 4.9 Plan Sponsor will at all times acknowledge that it is the Plan Sponsor, Plan Administrator, and Named Fiduciary, as these terms are defined in ERISA or other applicable law. As such, Plan Sponsor retains full discretionary control and authority and discretionary responsibility in the operation and administration of the FLEX Plan.
- 4.10 Plan Sponsor will pay any and all taxes, licenses, and fees levied, if any, by any local, state, or federal authority in connection with the FLEX Plan.
- 4.11 Plan Sponsor will hold confidential information obtained that is proprietary to the TPA or information or material not generally known by personnel other than management employees of the TPA.
- 4.12 Plan Sponsor will pay, in accordance with the Fee Schedule, the TPA's fees for services rendered under this Agreement. Unless otherwise agreed, the TPA may withdraw from the applicable account any fee then due to the TPA prior to application of the funds in the applicable account to pay Reimbursement Requests or any other costs arising out of the FLEX Plan or the subject matter of this Agreement.
- 4.13 Plan Sponsor will maintain any fidelity bond or other insurance as may be required by state or federal law for the protection of the FLEX Plan and Participants.
- 4.14 Plan Sponsor will notify the TPA of any requests for FLEX Plan documents or written inquiries about Reimbursement Requests processed under the FLEX Plan.
- 4.15 Plan Sponsor will maintain a supply of election forms, Reimbursement Request forms, Compensation Reduction Agreement forms, and other documents provided by the TPA, and will make them available to participating employees.
- 4.16 Plan Sponsor will submit timely payment for enrollment services and administrative fees as stated in Appendix A.
- 4.17 Plan Sponsor will provide all reports and documents required from time to time to satisfy governing law or to promote effective FLEX Plan operation.
- 4.18 Plan Sponsor retains sole responsibility for Plan Sponsor's obligations and responsibilities under the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, as amended, or the Health Insurance Portability and Accountability Act (HIPAA) of 1996, unless Plan Sponsor has specifically requested TPA to provide COBRA administrative services, in which case TPA's responsibilities for COBRA administration are stated in the COBRA Appendix attached hereto and made a part hereof by this reference.
- 4.19 If the Plan Sponsor elects Set-Up Services Only, as shown on the Fee Schedule in Appendix A, and elects not to have the TPA provide Re-Enrollment and Discrimination Testing Services, the Plan Sponsor retains sole responsibility for Discrimination Testing, and the TPA will have no responsibility for the same. Further, if these services are not elected, the TPA will have no responsibility whatsoever for notifying Plan Sponsor of changes in, and required compliance with, the laws applicable to this Plan, including Plan Document revisions required for such compliance. The Plan Sponsor will remain solely responsible for remaining apprized of such future changes in laws and required compliance with regard to Plan Documents.
- 4.20 The Plan Sponsor has sole responsibility for preparing and filing IRS Form 5500 if applicable.
- 4.21 TPA provides a website to its customers for access to plan information which includes Protected Health Information (PHI) as that term is defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Access to PHI via the website is limited to the person to whom the PHI belongs by use of a unique personal password mailed to that person's know address.
- Plan Sponsor has requested TPA issue passwords to persons requesting them via the TPA's website. Plan Sponsor and TPA agree to the following:
- The person requesting a password will certify their identity by using unique identifiers.
- TPA will not be responsible or liable in any way as the Business Associate of Plan Sponsor for any fraud or identity misrepresentation which causes a password to be issued to the wrong person.

SECTION 5. DURATION OF AGREEMENT

- 5.1 This Agreement shall commence on January 1, 2017, and end on December 31, 2017. This Agreement shall automatically renew at the end of each term for an additional twelve (12) month period, under the same terms, conditions and Fee Schedule unless modified or terminated as described below.
- 5.2 In the event of a change in the Fee Schedule for a subsequent twelve (12) month period, this Agreement shall renew upon acceptance by Plan Sponsor of a fee quote from the TPA for the succeeding twelve (12) month period. The fee quote described in this

subsection must be accepted, in writing, by Plan Sponsor prior to the renewal date for the period to which the fee quote applies. Nonacceptance of the fee quote prior to such renewal date shall cause this Agreement to lapse and terminate at 12:01 o'clock a.m. on that renewal date.

5.3 Either party may terminate this Agreement at any time upon providing the terminating party with thirty (30) days prior notice of intent to terminate unless both parties agree to waive such advance notice. All obligations of the TPA to process benefits under the FLEX Plan are terminated on the effective date of termination even though a reimbursable expense arose prior to the termination of this Agreement. At the option of the party initiating the termination, the other party may be permitted a cure period (of a length determined by the party initiating the termination) to cure any default.

5.4 Failure of Plan Sponsor to provide funds for Reimbursement Requests or to make contributions to the FLEX Plan will result in the termination of this Agreement thirty (30) days from the date of written notice to Plan Sponsor of the lack of funds.

5.5 Upon termination of this Agreement, the TPA shall provide an accounting and reconciliation to Plan Sponsor within sixty (60) days after the effective date of termination. Together with said accounting and reconciliation, the TPA shall return to Plan Sponsor all remaining funds of Plan Sponsor and/or its employees held by the TPA. TPA shall forward to Plan Sponsor all Reimbursement Requests received but not processed by TPA.

5.6 Any amendment which affects only the Fee Schedule, Appendix A, may be made, in writing signed by all parties, and without other formal amendment of this Agreement. All fee quotes accepted by Plan Sponsor for renewals of this Agreement will be incorporated into this Agreement as amendments to the Fee Schedule, Appendix A.

5.7 The TPA may, at its sole option, terminate this Agreement with ten (10) days written notice upon the occurrence of any one or more of the following events pertaining to the Plan Sponsor:

- A. The Plan Sponsor fails to pay administration fees or other fees for the TPA's services upon presentation for payment and in accordance with the Fee Schedule;
- B. The Plan Sponsor engages in any unethical business practice or conducts itself in a manner which in the reasonable judgment of the TPA may be a violation of any federal, state, or other government statute, rule, or regulation;
- C. The Plan Sponsor, through its acts, practices, or operations, exposes the TPA to any existing or potential investigation or litigation;

D. The Plan Sponsor loses its licensure or certification required by law to continue the FLEX Plan;

E. Insolvency;

F. Court appointment of a permanent receiver for all or substantially all of the Plan Sponsor's assets;

G. A general assignment of the benefit of creditors by the Plan Sponsor; or

H. The filing of a voluntary or involuntary petition of bankruptcy, if such petition is not dismissed within forty-five (45) days of the date of filing, provided that an order for relief from automatic stay has been obtained, or with respect to a Chapter 11 proceeding, that the bankrupt or Bankruptcy Trustee fails to reaffirm this Agreement and provide adequate assurances pursuant to 11 USC 365.

5.8 The Plan Sponsor may, at its option, terminate this Agreement with ten (10) days written notice upon the occurrence of any one or more of the following events pertaining to the TPA:

A. Insolvency;

B. Court appointment of a permanent receiver for all or substantially all of the TPA's assets;

C. A general assignment of the benefit of creditors by the TPA;

D. The filing of a voluntary or involuntary petition of bankruptcy, if such petition is not dismissed within forty-five (45) days of the date of filing, provided that an order for relief from automatic stay has been obtained, or with respect to a Chapter 11 proceeding, that the bankrupt or Bankruptcy Trustee fails to reaffirm this Agreement and provide adequate assurances pursuant to 11 USC 365;

E. The TPA engages in any unethical business practice or conducts itself in a manner which in the reasonable judgment of the Plan Sponsor may be a violation of any federal, state, or other government statute, rule, or regulation; or

F. The TPA loses its licensure or certification required by law to continue its business or continue as third-party administrator.

5.9 Plan Sponsor specifically acknowledges that the TPA incurs ongoing costs for staffing, long term planning, maintenance of customer service support and other costs connected with providing services to Plan Sponsor's Plan, and that the notice of termination and termination date provisions of this Agreement provide

adequate notice to the TPA so that unnecessary costs are not incurred by the TPA if Plan Sponsor terminates this Agreement. In that regard, it is specifically agreed by Plan Sponsor that in the event that Plan Sponsor either fails to provide the advance notice for termination required by this Agreement, the Plan Sponsor shall pay to the TPA a fee equal to two times the amount of Plan Sponsor's administrative fees payable to the TPA for the month immediately prior to the date notice of termination is received. The amount payable under this provision shall be as liquidated damages incurred by the TPA for the costs recited in this subsection, in lieu of specific calculation of the same, and not as a penalty.

5.10 In the event this Agreement is terminated for any reason and Plan Sponsor cannot be located following reasonable efforts by TPA, TPA shall charge a \$50.00 per check administrative charge for its efforts to return any stale dated funds (defined as a check with an original issue date greater than 180 days) belonging to Plan Sponsor or belonging to a plan participant who, likewise, cannot be located. The administrative charge may be paid from any funds of the Plan Sponsor held by TPA, or billed directly to the Plan Sponsor. This provision shall survive termination of this Agreement.

5.11 TPA, in its sole discretion may provide run out services upon the termination of this agreement. The Run out period, not to exceed 3 months, will be determined by the Plan Sponsor at the time of notification of the termination. If no run out time is specified, the TPA will cease all claims processing on the date of termination. Run out services will consist solely of processing claims incurred by a Participant prior to the date of termination of this agreement, but submitted no later than the end of the run out period. Run out services will be provided by the TPA only if at the time of termination of this agreement, all fees due the TPA and all plan funding are paid and current. TPA will not provide run out services if the above conditions are not met, or if termination is a result of any of the conditions listed in paragraph 5.7 of this Agreement. The run out fee, which is payable in advance, will be an amount equal to the amount of Plan Sponsor's administrative fees payable to the TPA for the month immediately prior to the date notice of termination multiplied by the run out time in months. Upon determination of the run out period, a run out fee schedule will be issued to the Plan Sponsor as an Appendix B to this agreement.

SECTION 6. LIMITATIONS AND INDEMNIFICATION

6.1 In performing its obligations in this Agreement, the TPA is acting only as an independent contractor. Plan Sponsor shall be deemed to be Plan Administrator, unless Plan Sponsor designates an individual or committee to act as Plan Administrator. For purposes of the Employee Retirement Income Security Act of 1974 as amended from time to time and any applicable State legislation of a similar nature, Sponsor will be deemed to be Administrator of the Plan, unless Sponsor designates an individual or committee to act as

Administrator. In no instance will the TPA be deemed to be or be, Administrator of the Plan for purposes of the Employee Retirement Income Security Act of 1974, as amended from time to time.

6.2 The TPA will not be liable for, and will not advance its funds for payment of Reimbursement Requests under the FLEX Plan. The TPA will not be considered the insurer or underwriter of the liability of Plan Sponsor to provide benefits for the employees participating under the FLEX Plan. Plan Sponsor will have final responsibility and liability for Reimbursement Requests in accordance with the FLEX Plan.

6.3 The TPA will indemnify, defend, save and hold the Plan Sponsor harmless from and against any and all claims, suits, actions, liabilities, losses, penalties or damages including court costs and attorney's fees with respect to the FLEX Plan which directly result from or arise out of the dishonest, fraudulent, grossly negligent or criminal acts of the TPA or its employees, except for any acts taken at the specific direction of the Plan Sponsor.

6.4 The Plan Sponsor will indemnify, defend, save, and hold the TPA harmless from and against any and all claims, suits, actions, liabilities, losses, penalties or damages, including court costs and attorneys' fees, to the extent that such claims, losses, liabilities, damages and expenses arise out of or are based upon the gross negligence, fraudulent, criminal or dishonest acts of Plan Sponsor, its agents and employees in the performance of their duties, a release of data by the TPA to the Plan Sponsor, or an interpretation of the FLEX Plan by the Plan Sponsor on which the TPA acts.

SECTION 7. MISCELLANEOUS

7.1 This Agreement, together with all addenda, exhibits, and appendices supersedes any and all prior representations, conditions, warranties, understandings, proposals, or other agreements between the Plan Sponsor and the TPA hereto, oral or written, in relation to the services and systems of the TPA, which are rendered or are to be rendered in connection with its assistance to the Plan Sponsor in the administration of the FLEX Plan.

7.2 This Agreement, together with the aforesaid addenda, exhibits, and appendices constitutes the entire Administrative Services Agreement of whatsoever kind or nature existing between or among the parties.

7.3 The parties hereto, having read and understood this entire Agreement, acknowledge and agree that there are no other representations, conditions, promises, agreements, understandings, or warranties that exist outside this Agreement which have been made by either of the parties hereto, which have induced either party or have led to the execution of this Agreement by either party. Any statements, proposals, representations, conditions, warranties, understandings, or agreements which may have been heretofore made by either of the parties hereto, and which are not expressly contained or

- incorporated by reference herein, are void and of no effect.
- 7.4 This Agreement may be executed in two or more counterparts, each and all of which shall be deemed an original and all of which together shall constitute but one and the same instrument.
- 7.5 Except as provided herein, no changes in or additions to this Agreement shall be recognized unless and until made in writing and signed by all parties hereto.
- 7.6 In the event any provision of this Agreement is held to be invalid, illegal, or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice, or disturb the validity of the remainder of this Agreement, which shall remain in accordance with its terms.
- 7.7 The Plan Sponsor will notify the TPA within ten (10) Working Days of any inquiry made by any Participant or authorized representative of any Participant related to Plan Documents, Plan Records, Reimbursement Requests, disputes, threatened litigation, lawsuits pertaining to the FLEX Plan or any inquiry made by any federal or state authority regarding the FLEX Plan.
- 7.8 In the event that either party is unable to perform any of its obligations under this Agreement because of natural disaster, labor unrest, civil disobedience, acts of war (declared or undeclared), or actions or decrees of governmental bodies (any one of these events which is referred to as a "Force Majeure Event"), the party who has been so affected shall immediately notify the other party and shall do everything possible to resume performance.
- Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of non-performance exceeds fourteen (14) Working Days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving ten (10) Working Days written notice, terminate this Agreement.
- 7.9 All notices required to be given to either party by this Agreement shall, unless otherwise specified in writing, be deemed to have been given three (3) days after deposit in the U.S. Mail, first class postage prepaid, certified mail, return receipt requested.
- Any official notice to the TPA will be mailed to the attention of the President at 2806 South Garfield Street, Missoula, MT 59801. The TPA will not be bound by any notice, directive or request unless and until it is received in writing at this address.
- Any official notice to the Plan Sponsor will be mailed to the attention of the County HR Manager at P. O. Box 1727, Jackson, WY 83001. The Plan Sponsor will not be bound by any notice, directive or request unless and until it is received in writing at this address.
- 7.10 The TPA has adopted an Affirmative Action Policy that is in compliance with Section 49-3-101 to Section 49-3-303 MCA. Employees hired by the TPA are hired on the basis of merit and qualifications; and there is no discrimination on the basis of race, color, religious creed, political ideas, sex, age, marital status, physical handicap, national origin or ancestry by persons performing this Agreement. Qualifications mean such abilities as are genuinely related to competent performance of the particular occupational task.
- 7.11 This Agreement shall be interpreted and construed in accordance with the laws of the state of Montana except to the extent superseded by federal law.
- 7.12 No forbearance or neglect on the part of either party to enforce or insist upon any of the provisions of this Agreement shall be construed as a waiver, alteration, or modification of the Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on their behalf by their duly authorized representatives, effective as of the date first above written.

TETON COUNTY
200 South Willow
PO Box 3594
Jackson, WY 83001

ALLEGIANCE BENEFIT PLAN MANAGEMENT, INC.
2806 S. Garfield Street
PO Box 4346
Missoula, MT 59801

BY: _____
Signature

BY: _____
Signature

NAME: **Barbara Allen**
TITLE: **Chairman, Teton County**
Board of County Commissioners

NAME: **Ronald K. Dewsnup**
TITLE: **President, General Manager**

ATTEST: _____
Signature

NAME: **Sherry Daigle**
TITLE: **Teton County Clerk**

APPENDIX A

FEE SCHEDULE AND FINANCIAL ARRANGEMENT

1. FEE SCHEDULE

The Plan Sponsor and the TPA hereby agree to the compensation schedules set forth below as being the sole compensation to the TPA for any of its services which relate to the FLEX Plan. Monthly fees are based upon Plan Participant enrollment as of the beginning of the month.

Annual Administration fees shall be payable in advance and, if such amount is determined by the monthly Plan Participant enrollment, will be reconciled annually on the contract anniversary date. In the event that this Agreement is terminated prior to the end of any twelve-month contract period, the amount of annual fee will be determined by the first month enrollment times twelve.

Plan Sponsor shall pay THE TPA the following fees as indicated:

SERVICE	CHECK TO ELECT	AMOUNT DUE	DATE DUE
A. Set-up Fee (Only applicable to new clients, otherwise strictly for information)	<u> N/A </u>	N/A	N/A
B. Monthly Service Fee FSA	<u> X </u>	\$4.75/participant/month or \$50.00/month minimum (Service Fee/sponsor group)	Within 30 days of invoice date
C. Annual Re-Enrollment Fee* (Includes re-enrollment of group annually into software system, changes to Plan Document and Summary Plan Description, and any other changes required for the Flex Plan to remain in compliance with current federal and state law.)	<u> X </u>	\$250.00	Within 30 days of invoice date
D. Hourly fee of \$50.00 for reconciliation of contribution listing and related accounting services.			
E. Hourly fee of \$100.00 for welfare plan consulting. Such services must be agreed to in advance by the Plan Sponsor.			
F. Hourly fee of \$100.00 per hour for audit assistance services and any other services provided by the TPA not specifically provided for in this Agreement.			
G. Electronic Payment Card Service	<u> N/A </u>		
H. Fee for COBRA services	<u> X </u>	included under a separate COBRA Services agreement	