



Board of County Commissioners - Staff Report

Meeting Date: December 6, 2016

Presenter: Julianne Fries, Director of HR

Submitting Dept: Human Resources

Subject: Allegiance Administrative Services Agreement (ASA) for Health Reimbursement Account (HRA)

Statement / Purpose:

Consideration of an Administrative Services Agreement (ASA) for Allegiance to administer Teton County's Health Reimbursement Account (HRA) for medical expenses.

Background / Description (Pros & Cons):

The ASA outlines the responsibilities of Allegiance as the third party administrator of the HRA. The purpose of the HRA is to allow employees, 65 years of age or older, who are unable to contribute to a Health Savings Account (due to I.R.S. regulations) the opportunity to receive County contributions through an alternative means. A Health Reimbursement Account is employer owned; employees are not able to contribute to this account on a pre-tax basis. The intended purpose is for employees to be able to receive the County's monthly contributions. Same as with an FSA, it is a 'use it or lose it' account, meaning account balances do not roll over year-to-year. Currently, we have five employees who are eligible to participate in this program and anticipate another three coming on during the 2017 benefit plan year.

An HRA is considered a medical benefit plan and therefore is subject to COBRA. This means that if an employee leaves employment with Teton County, they must be afforded the opportunity to continue coverage of group health benefits. Under COBRA, the employee becomes responsible for the monthly premium costs and the county would be required to continue making contributions up to a maximum of 18 months. The HRA annual premium cost is \$604.14 for single and \$1,282.14 for family, which becomes the responsibility of the inactive employee under COBRA; essentially funding over half of the HRA contribution via their COBRA premiums. However, an individual in this situation is not likely to COBRA an HRA as they also must COBRA the Medical Benefit Plan to be eligible to carry the HRA plan. At this point in their life, they are also enrolled in Medicare benefits, which would be more affordable. An individual is not likely to elect to COBRA for the medical plan and their HRA over Medicare, and assume a monthly premium under COBRA for an HRA, combined with the monthly premium for continuing with the HDHP medical benefits, it is not likely a financially appealing option. But it's important to know that we are required to allow COBRA for an HRA.

Stakeholder Analysis & Involvement:

None.

Fiscal Impact:

We pay an annual re-enrollment fee of \$250.00. In addition, there is a monthly service fee of \$4.75/participant/month to cover administrative responsibilities such as processing deposits and claims, and answering inquiries. This fee has remained flat since first instituting these accounts in 2015.

Staff Impact:

none

Legal Review:

K. Gingery has reviewed and approved the agreement.

Staff Input / Recommendation:

Staff recommends approving the Allegiance Administrative Services Agreement for the County's Health Reimbursement Account.

Attachments:

The HRA Administrative Services Agreement and Appendix are attached.

Suggested Motion:

I move to approve the Allegiance Administrative Services Agreement for the County's Health Reimbursement Account Benefit Plan, effective January 1, 2017 and ending on December 31, 2017.

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

**ADMINISTRATIVE SERVICES AGREEMENT
SECTION 105 MEDICAL EXPENSE REIMBURSEMENT 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 (WY), 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 medical expense reimbursement plan (hereinafter referred to as the health reimbursement arrangement or HRA Plan) which is a healthcare expense reimbursement plan within the meaning of Section 105 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 HRA Plan; and

WHEREAS, the TPA desires to contract with the Plan Sponsor to perform such supervisory services with respect to the 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 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 HRA 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 | "COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, together with all regulations applicable thereto. | 1.6 | "Employer" means the Plan Sponsor and any successor organization or affiliate of such Employer which assumes the obligations of the HRA Plan and this Agreement. |
| 1.2 | "Code" means the Internal Revenue Code of 1986, and any applicable amendments and any Treasury regulation applicable to the section or subsection. | 1.7 | "ERISA" means the Employee Retirement Income Security Act of 1974, as amended, together with all regulations applicable thereto. |
| 1.3 | "Covered Person" means any Participant or Dependent of a Participant meeting the eligibility requirements for coverage and properly enrolled for coverage as specified in the Plan. | 1.8 | "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. |
| 1.4 | "Dependent" means any eligible Dependent who is a Tax Dependent for the tax year during which expenses were incurred. | 1.9 | "Group Health Plan" means any group health care, disability, dental or vision care plan provided by premiums to and contract with a third-party insurer that is in force for Employees of the Employer and as may be amended or replaced from time to time at the discretion of the Employer. |
| 1.5 | "Employee" means an individual that the Employer classifies as a common-law employee and who is paid by the Employer, but does not include any leased employee (including but not limited to those individuals defined in Code '414(n)), or any individual classified by the Employer as a contract worker, independent contractor, temporary employee or casual employee, whether or not any such persons are on the employer's W-2 payroll, or any individual who performs services for the Employer but | 1.10 | "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. |

- 1.11 **"Participant"** is any employee, retiree or COBRA beneficiary who is eligible for, properly enrolled in and entitled to benefits from the HRA Plan.
- 1.12 **"Plan"** means the Medical Expense Reimbursement 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, together with any and all amendments, supplements and appendices and any other relevant documents pertinent to its operation and maintenance.
- 1.13 **Plan Administrator** means the Employer and/or any person or entity designated by the Plan Sponsor which is responsible to manage the day-to-day functions and management of the HRA Plan and make all discretionary decisions regarding Plan terms and managing Plan funds. The Plan Administrator may employ persons or firms to process premium payments 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 Plan unless by action of the Board of Directors or equivalent authority the Employer designates an individual or committee to act as Plan Administrator.
- 1.14 **"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 HRA Plan which provide for reimbursement of out-of-pocket healthcare expenses not covered under the Plan Sponsor's employee health and welfare benefits plan.
- 1.15 **"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 for the benefit of a group or groups of employees. Plan Sponsor includes any successor organization or affiliate of such Plan Sponsor that assumes the obligations of the HRA Plan and this Agreement.
- 1.16 **"Plan Year"** means the twelve-month period of time commencing with the effective date of this HRA Plan or the Plan anniversary date, and terminating on the date of the next succeeding Plan anniversary date. The Plan anniversary date will be on the 1st of each year.
- 1.17 **"Plan Summary"** means the document that describes the terms and conditions under which the HRA Plan operates.
- 1.18 **"Working Day"** means 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 HRA 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 language 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. 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 Plan. The Plan Sponsor has total responsibility for payment of contributions for the employee health and welfare benefits reimbursement plan under the HRA Plan and all expenses incidental to the 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 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. Either party may submit the dispute to arbitration before a single arbitrator and in accordance with the rules of the American Arbitration Association. The cost of such arbitration will be paid by the party that does not substantially prevail. 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.
- 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 parties to this Agreement acknowledge that 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. 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 TPA shall be removed from such information. TPA will not disclose proprietary, confidential or trade secret information to Plan Sponsor without 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 HRA Plan Supervisory Services for the Plan Sponsor. The fees for these services are stated in the Fee Schedule in Appendix A.

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

3.2 The TPA will maintain HRA Plan records based on information submitted by the Plan Sponsor as to the dates on which the Plan becomes effective.

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

- A. Receive reimbursement requests and supporting documentation (Explanations of Benefits) from Participants for processing.
- B. Process Qualifying Expenses and determine Reimbursable Expenses in accordance with the terms of the Medical Expense Reimbursement Plan Document.
- C. Notify Plan Sponsor of funding requirements in order to fully fund and pay claims as required by applicable law.
- D. Prepare and transmit reimbursement for Reimbursable Expenses as defined in the Plan Document.

3.4 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.

3.5 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.

3.6 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 for a purpose unrelated to the administration of the Plan.

3.7 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.

3.8 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. A separate fee will be charged for this service as stated in Appendix A.

3.9 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.

3.10 Upon request of Plan Sponsor, TPA will perform 25% Key Employee Concentration discrimination testing and/or prepare the IRS Form 5500 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.

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 HRA Plan and such other information as may be necessary.

4.2 Plan Sponsor will give notice of the establishment of the HRA Plan to its employees and will be responsible for distributing copies of the Plan Summary 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 coverage, 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 Plan.

responsibilities for COBRA administration are stated in the COBRA Appendix attached hereto and made a part hereof by this reference.

- 4.4 Plan Sponsor will resolve all Plan ambiguities and disputes relating to the eligibility of a Plan Participant or any other Plan interpretation questions. The Plan Sponsor will respond to any written request made by the TPA within ten (10) working days.
- 4.5 Plan Sponsor will provide the TPA with copies of any and all revisions or changes to the Plan within five (5) Working Days of the effective date of the changes.
- 4.6 Plan Sponsor will provide, and timely distribute, all notices and information required to be given to Participants, maintain and operate the 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.
- 4.7 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. As such, Plan Sponsor retains full discretionary control and authority and discretionary responsibility in the operation and administration of the Plan.
- 4.8 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 Plan.
- 4.9 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.
- 4.10 Plan Sponsor will pay, in accordance with the Fee Schedule, the TPA's fees for services rendered under this Agreement.
- 4.11 Plan Sponsor will maintain any insurance as may be required by state or federal law for the protection of the Plan and Participants.
- 4.12 Plan Sponsor will notify the TPA of any requests for HRA Plan documents.
- 4.13 Plan Sponsor will maintain a supply of election forms and other documents provided by the TPA and will make them available to participating employees.
- 4.14 Plan Sponsor will provide all reports and documents required from time to time to satisfy governing law or to promote effective HRA Plan operation, including, but not limited to, year-to-date payroll deduction summaries.
- 4.15 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

- 4.16 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 Services, 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 apprised of such future changes in laws and required compliance with regard to Plan Documents.

- 4.17 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. Assuming there are no technological impediments to providing this service to Plan Sponsor, 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. Non-acceptance 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 At any time during the term of this Agreement, either the Plan Sponsor or the TPA may amend or change the provisions of this Agreement. These amendments or changes must be agreed upon in advance in writing by both the Plan Sponsor and the TPA. If any such amendment increases the TPA's cost of administering the Plan, the Plan Sponsor agrees to pay any increase in funding expenses, as well as increases in administrative

fees or other costs which the TPA reasonably expects to incur as a result of such modification.

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.

5.4 This Agreement may be terminated by either party 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. 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.

5.5 The TPA may, at its sole option, terminate this Agreement within 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. Insolvency;
- E. Court appointment of a permanent receiver for all or substantially all of the Plan Sponsor's assets;
- F. A general assignment of the benefit of creditors by the Plan Sponsor; or
- G. 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.

5.6 The Plan Sponsor may, at its option, terminate this Agreement within 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.

5.7 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.

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 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 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.

6.3 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 attorney's 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 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 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, disputes, threatened litigation, lawsuits pertaining to the Plan or any inquiry made by any federal or state authority regarding the 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 200 South Willow, 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 which 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: **Chairperson, Teton County
Board of County Commissioners**

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

ATTEST: _____
Signature

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

APPENDIX A

FEE SCHEDULE AND FINANCIAL ARRANGEMENT

I. 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 that relate to the Plan.

Annual Administration fees shall be payable in advance. 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 HRA	<u>__X__</u>	\$4.75/participant month or \$25.00/month minimum (Service Fee/sponsor group)	Within 30 days of invoice date
C.	Re-Enrollment Fee* (Includes changes to Plan Document and Plan Summary and any other changes required for Plan to remain in compliance with current federal and state laws.)	<u>__X__</u>	\$250.00	Within 30 days of invoice date

* If the Plan Sponsor elects not to have the TPA provide Re-Enrollment Services, 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 apprised of such future changes in laws and required compliance with regard to Plan Documents.