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Title: CONSIDER APPROVAL OF AGREEMENTS WITH BASIC BENEFITS, LLC TO PROVIDE FLEXIBLE SPENDING, COBRA AND FMLA ADMINISTRATIVE SERVICES TO CITY FOR EMPLOYEE BENEFIT PLANS (CITY COUNCIL)

Sponsors:

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Attachments: 1. Exhibit 1 - RFP 10 1 19 Rate Table, 2. Exhibit 2 - BASIC Proposal, 3. Exhibit 3 - BASIC Business Associate Agreement, 4. Exhibit 4 - BASIC Administrative Service Agreement (FSA), 5. Exhibit 5 - BASIC COBRA Administration Service Agreement, 6. Exhibit 6 - BASIC FMLA EASE Administration Agreement

Date	Ver.	Action By	Action	Result
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Report to Mayor and City Council

Tuesday, August 04, 2020

Consent

SUBJECT:

CONSIDER APPROVAL OF AGREEMENTS WITH BASIC BENEFITS, LLC TO PROVIDE FLEXIBLE SPENDING, COBRA AND FMLA ADMINISTRATIVE SERVICES TO CITY FOR EMPLOYEE BENEFIT PLANS (CITY COUNCIL)

I. SUMMARY

This item is being presented to the City Council with a recommendation that BASIC Benefits, LLC ("BASIC") be approved to provide the City's Flexible Spending Account (FSA), Consolidated Omnibus Budget Reconciliation Act (COBRA) and Family Medical Leave Act (FMLA) Administrative Services effective October 1, 2020. The City Council's approval of these contracts will allow Staff to adequately prepare for an implementation of services and the upcoming Benefit Open Enrollment. The current provider, Ameriflex, will pay any claims from the current year 2020 through the run-off period ending March 31, 2021.

II. RECOMMENDATION

TAKE the following actions:

1. APPROVE the following Agreements with BASIC: (1) Business Associate Agreement; (2) Administrative Services Agreement (FSA); (3) COBRA Administration Service Agreement; and (4) FMLA EASE Administration Agreement, effective October 1, 2020, with a 36-month rate guarantee for all 3 lines of business (collectively, "Agreements") (Exhibit No's. 3* - 6*).
2. AUTHORIZE the Mayor to execute the Agreements following approval as to form by the City Attorney.

III. ALTERNATIVES

Take any other action the Council deems appropriate, subject to compliance with applicable law.

IV. BACKGROUND

Effective December 1, 2017, the City entered into an agreement with its current FSA vendor, Ameriflex, to provide flexible spending account services to the City, but is considering termination of that agreement in favor of a vendor selected through a new solicitation process. The City currently processes COBRA and FMLA administration in-house. Given the continued employer-mandated changes in leave management and compliance, Staff is recommending that a third-party vendor with expertise in the industry manage the administrative services for these federally-mandated programs, COBRA and FMLA, as well.

On behalf of the City, Bender Benefits (the City's benefits broker) requested proposals on October 1, 2019, and received administrative services quotes on all 3 lines from Ameriflex, BASIC, Infinisource and TASC (Exhibit No. 2). After review of the proposals, Staff determined that BASIC submitted the best proposal and offer for the City and its employees based upon current needs.

Established in 1989, BASIC has grown into one of the largest Third Party Administrators (TPAs) in the nation with 11 regional sales and servicing centers throughout the United States providing an HR ecosystem to employers and health insurance agents/brokers.

BASIC's proposal offers a 36-month rate guarantee period. A short summary of the rates is as follows (BASIC's Fee Rates are provided in full in Exhibit No. 2):

FSA Set-up Fee Waived; Monthly Rate \$4.00 per participant

COBRA Set-up Fee Waived; Monthly Fee \$0.70 per insured employee / \$201.60 per month (based on current employee headcount)

FMLA Set-up Fee Waived (normally \$800.00); Monthly Fee \$288.00

Based on the foregoing, staff recommends that the City Council approve the Agreements with BASIC, effective October 1, 2020.

Legal Considerations

BASIC requires the City to execute a separate agreement for each type of administrative services to be provided, as well as a Business Associate Agreement (BAA) for compliance with applicable privacy laws related to disclosures of employee information to BASIC as necessary to facilitate the plan administration services. The Agreements were prepared by BASIC using BASIC's forms. Notwithstanding the use of BASIC's forms, with the exception of those items discussed below, the City Attorney's Office was able to successfully negotiate several changes to make the Agreements more consistent with the City's standard contracting policies. We have been finding more and more that when we contract with large companies that have their own standard forms, it is not possible to negotiate terms completely commensurate with our standard terms. Based upon the success our City Attorney's Office has had in maintaining many of our most important terms, staff recommends moving forward with BASIC.

- Term/Contract Sum. The initial term of the Agreements will be one-year and the Agreements will automatically renew for additional one-year periods unless either party notifies the other of an intent to not renew the Agreement no later than 30 days prior to the end of the term or renewal term. The Agreements will not contain individual specified contract sums given their fee rate and headcount-based nature but will provide that in no event shall the collective fees/charges incurred by the City exceed \$25,000 in any year. While staff does not anticipate approaching this amount in total annual expenditures pursuant to the Agreements, this cap was added as a safeguard. While there are certain additional/special fees that the City could incur for extra services upon request/notice (Exhibit No. 2), the annual fees for the base services under the Agreements (which will remain the same for at least the first 36 months) are anticipated to be less than \$10,000 (but will vary based on employee/participant headcount).
- Termination. The City normally requires the right of termination for convenience (i.e., the right to terminate at any time for any reason, generally upon 30 days' notice to the other party). The City has this right upon 60 days' notice to BASIC under the FMLA Agreement (Section III). However, the BAA (Section VIII) can only be terminated for cause or when all Protected Health Information (as defined in the Agreement) is destroyed or returned to City, and the FSA and COBRA Agreements can only be terminated either for cause, on mutual agreement, due to force majeure, or due to dissolution of either party (although the Agreements can be non-renewed annually on 30 days' notice). The FSA Agreement also contains a termination provision (Section 24 (c)) stating that upon termination, BASIC reserves the right to deduct any undisputed outstanding fees from City general assets held by BASIC for the payment of benefits. The City Attorney's office requested removal of this provision but BASIC declined to remove it.

- Indemnification. The FSA Agreement (Section 12(d)-(f)), BAA (Section IX(j)), and COBRA Agreement (p.6) provide for mutual indemnification (each party indemnifies the other for the indemnifying party's negligence, breach of the Agreement, or violation of law). The FMLA Agreement (Section V) provides for certain limited hold harmless provisions and for cooperation in defense of claims but does not provide for indemnification by either party.
- Insurance. BASIC has declined to agree to waiver of subrogation by its insurers against the City, and declined to name the City's officers, employees and agents as additional insureds under its policies (although it has agreed to name the City as an additional insured). These are standard requirements of the City's Risk Management Division, but under the totality of the circumstances (e.g., services to be performed remotely); Risk Management has indicated it is amenable to the insurance provisions.
- Limitation of Liability. The FSA Agreement (Section 12(a)) limits each party's cumulative potential liability related to the Agreement to the amount of fees/charges paid by City to BASIC, with very limited exceptions (not including either party's indemnification obligations or BASIC's insurance coverages; BASIC declined to agree to an exception from the liability limitation for its obligations in this regard). The FSA Agreement (Section 12(b)) also provides that neither party shall be liable for any indirect, special, incidental, consequential, punitive, or exemplary damages, including damages related to delays, loss of data, interruption of services or loss of business. While these provisions significantly limit liability, they are mutual for both parties, and are not particularly uncommon or out of the ordinary.

Additionally, the FSA Agreement currently references inclusion of HRA and HSA Administration. These services are not currently provided by Ameriflex and will not be provided by BASIC. The references to these services will be removed from the revised FSA Agreement presented to Council. However, the FSA Agreement will include the full POP service at no additional charge.

The edits to the Agreement pursuant to the negotiations are being prepared by BASIC's legal counsel as of the date of this report. The City Attorney's office and staff anticipate receiving the revised Agreements in time to present them to the City Council for approval during the Council meeting. The above discussion of legal issues is based on the anticipated terms of the revised Agreements that will be received from BASIC and presented to the Council. If these terms change, any significant differences will be addressed verbally by the City Attorney's office during consideration of the item.

V. FISCAL IMPACT

Funds for these employee benefits were included in the FY 2020/2021 General Fund

Budget.

VI. EXHIBITS

1. RFP 10/1/19 Rate Table (pg. 5)
 2. BASIC Proposal (pgs. 6-30)
 3. BASIC Business Associate Agreement* (pgs. 31-38)
 4. BASIC Administrative Services Agreement (ASA)* (FSA) (pgs. 39-51)
 5. BASIC COBRA Administration Service Agreement* (pgs. 52-61)
 6. BASIC FMLA EASE Administration Agreement* (pgs. 62-68)
- * Revised Agreement to be presented during 8/4/20 City Council Meeting

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