

Board of Crawford County Commissioners

Commissioners' Journal

2015, SIXTY-FOURTH MEETING

CRAWFORD COUNTY COURTHOUSE, COMMISSIONERS' BOARD ROOM
Girard, KS Tuesday, September 1, 2015, 10:00 AM

The Crawford County Board of Commissioners met pursuant to Kansas Statutes Annotated Chapter 19, Article 2, Section 18 in due and regular session with open doors. Commissioner Carl Wood served as the presiding officer. Commissioners Tom Moody and Jeff Murphy were in attendance. County Clerk Don Pyle and County Counselor Jim Emerson were seated with the Board. Chairman Wood led the pledge of allegiance.

UNDER THE HEADING BUSINESS FROM A PREVIOUS MEETING CONSENT AGENDA

On motion (15-253) of Commissioner Moody and the second of Commissioner Murphy that the consent agenda be approved including:

1. Approval of the August 28, 2015 minutes of the Board of Commissioners.

Yeas: Commissioners Moody, Wood, and Murphy

Nays:

Present but not voting:

Absent or not voting:

The motion prevailed and the consent agenda was approved.

SIGNING OF MOTIONS

The County Clerk presented the following motions for Commissioners' signatures:

Motion 15	251	That the consent agenda be approved including: Approval of the August 25, 2015 minutes
Motion 15	252	To adopt Resolution Number 2015-031 a Resolution Appointing David Robinson member of the Crawford Count Planning and Zoning Board.

UNDER THE HEADING NEW BUSINESS CRAWFORD COUNTY BOARD OF HEALTH PUBLIC HEARINGS AND OPENING OF ANNOUNCED BIDS MESSAGES FROM THE PUBLIC MESSAGES FROM OTHER GOVERNMENTAL ENTITIES

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MESSAGES FROM ELECTED OFFICIALS MESSAGES FROM APPOINTED OFFICIALS PROCLAMATIONS AND ORDERS OF THE BOARD NEW BUSINESS

Item One: County Clerk Don Pyle reminded the Commissioners that Monday, September 7, is Labor Day and that the courthouse will be closed in observance of the holiday. Commissioner Wood asked about the City of Pittsburg Sales Tax Question Election that will be held on Thursday, September 24, 2015. Mr. Pyle stated that since the election is not being held on a Tuesday, the Final Canvass of the ballots does not have to be held on the following Monday or the Thursday following that. This will allow the Final Canvass of the ballots to be held at the Regular Commission Meeting on Tuesday, September 29, 2015. Commissioner Wood was answered that Mr. Pyle had sent the RSVP to Elk County for the county officials that will attend the SEK County Officials Meeting there on September 10, 2015.

UNDER THE HEADING OLD BUSINESS

Item One: Commissioner Murphy regarding a Consulting Agreement with John Chalfant and Gallagher Benefit Services. Mr. Murphy stated that the agreement with Mr. Chalfant and Gallagher Benefit Services will provide the county with some needed guidance in the development of the new wellness program and in negotiating the new contract for health insurance coverage. There was a discussion of the terms of the contract and that it is for one year and that either party can terminate the agreement with 30 days notice.

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CONSULTING AGREEMENT

This Consulting Agreement (this "Agreement") is made by and between Gallagher Benefit Services, Inc., ("Gallagher") and Crawford County, Kansas (the "Client").

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

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

1. *Engagement*

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

2. *Term and Termination*

The Effective Date of this Agreement is September 1, 2015. The term of Gallagher's engagement under this Agreement (the "Consulting Period") will begin as of the Effective Date and will remain in effect for one (1) year from the Effective Date. **The Consulting Period may be extended upon the mutual written agreement of the parties.** Either party may terminate this Agreement by giving the other party at least thirty (30) days written notice of its intent to terminate. In the event such termination is effective during the Consulting Period (including any renewed Consulting Period), Client shall be responsible to Gallagher for any services performed prior to the date of termination and Gallagher shall be responsible to Client to continue to provide services until the date of termination of this Agreement.

3. *Services*

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

4. *Compensation*

Subject to any changes as may be mutually agreed by the parties, Gallagher will receive, as compensation for its services under this Agreement, fees in the amount of \$10,500 per year, which amount will be billed in equal installments of \$875 and paid on a monthly basis.

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

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

5. *Performance and Scope*

(a) Gallagher Not a Fiduciary Under ERISA. To the extent that one or more of the Client's employee benefit plans are subject to the Employee Retirement Income Security Act of 1974, as amended

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("ERISA") and in spite of any other provision of this Agreement to the contrary, the parties agree and acknowledge that:

(i) Gallagher's services under this Agreement are not intended in any way to impose on Gallagher or any of its affiliates a fiduciary status under ERISA; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) The Client is responsible for immediate payment of Gallagher's fees (if applicable) and payment of premiums for all insurance placed by Gallagher on Client's behalf. If any amount is not paid in full when due, including premium payments to insurance companies, that nonpayment will constitute a material breach of this Agreement that will allow Gallagher to immediately terminate this Agreement, at its option, without notice to the Client, and may allow an insurance company for the Client's risks to cancel any applicable policies in accordance with the terms of such policies.

6. *Confidentiality*

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

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

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

7. *Indemnification Rights and Limitation of Liability*

(a) Indemnification. Each party ("Indemnifying Party") will promptly defend, indemnify and hold the other party ("Indemnified Party") harmless from and against any and all claims, suits, actions, liabilities, losses, expenses or damages which the Indemnified Party may incur as a result of any violation by the Indemnifying Party of any law, or any loss or expense to the Indemnified Party caused by the misrepresentation, negligent act or omission, or any breach of any of the Indemnifying Party's obligations under this Agreement.

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(b) Limitation of Liability. Notwithstanding any other term or provision of this Agreement, each party shall only be liable for actual damages incurred by the other party, and shall not be liable for any indirect, consequential or punitive damages. Furthermore, the aggregate liability under this Agreement, if any, of either party to the other for claimed losses or damages shall not exceed \$20,000,000. This provision applies to the fullest extent permitted by applicable law.

8. Notices

Any notices, requests and other communications pursuant to this Agreement will be in writing and will be deemed to have been duly given, if delivered in person or by courier or sent by express, registered or certified mail, postage prepaid, addressed as follows:

If to the Client: Crawford County, Kansas
Attention: Jim Emerson
111 E. Forest
Girard, KS 66743

If to Gallagher: Gallagher Benefit Services, Inc.
Attention: John Chalfant
2345 Grand Ave., Suite 400
Kansas City, MO 64108

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

9. Miscellaneous

(a) Severability. The various provisions and subprovisions of this Agreement are severable and if any provision or subprovision or part thereof is held to be unenforceable by any court of competent jurisdiction, then such enforceability will not affect the validity or enforceability of the remaining provisions or subprovisions or parts thereof in this Agreement.

(b) Entire Agreement; Amendment. This Agreement, including all exhibits hereto, constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether oral or written, between the parties regarding the subject matter hereof. Except for changes in carriers and/or lines of coverage noted in Exhibit B which may occur upon unilateral approval of the Client, this Agreement may be modified or amended only by a written instrument executed by both parties.

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

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

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

(f) Survival of Provisions. Sections 5(a), 6 and 7 will survive the termination of this Agreement.

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

CRAWFORD COUNTY, KANSAS

By: _____

Name: _____

Title: _____

Date: _____

GALLAGHER BENEFIT SERVICES, INC.

By: _____

Name: John Chalfant

Title: Area Senior Vice President

Date: _____

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EXHIBIT A SCOPE OF SERVICES

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

CONSULTING SERVICES PROVIDED ON AN "AS NEEDED" BASIS

Wellness Program

- Onsite visit, tour, and meeting
- Analysis of all reports, data, and records
- Review all existing data and claims from carrier, pharmacy, and any other sources
- Conduct new data gathering activities as needed; choices include focus groups, wellness interest survey, or leadership survey
- Conduct environment assessment (wellness related)
- Thoroughly analyze carrier wellness offerings, costs, and potential for Client
- Creation of a customized case for a strategic wellness plan
- Discussion and strategic planning of final choices:
 - Major intervention components
 - Resources available and metrics for tracking potential savings
 - Benefits plan design and incentive strategy
 - Engagement strategies and incentive design to motivate participants
- Delivery of final plan to HR, executives, and consultant

Renewal Negotiations

Gallagher will interact with the current administrator prior to renewal. Specifically, Gallagher will:

- Negotiate performance guarantees
- Review performance against these set standards throughout the year.
- Perform a plan design analysis in order to provide the most cost effective set of benefits
- Benchmark various phases of the benefits program (e.g. Deductible, Out of Pocket limits, Contribution Strategy, etc.)
- Provide comparable alternatives (Compare the renewal to marketplace alternatives)
- Negotiate and finalize the renewal

Ongoing Financial Management

Gallagher will:

- Consistently monitor the administrator's claims management results
- Evaluate current costs and projected future expenditures
- Review utilization rates, disease management effectiveness, network performance and catastrophic case management
- Work with carrier on estimating incurred but not reported (IBNR) claims, if applicable
- Prepare a year-end forecast, including projected claims and fixed costs
- Periodically updating the original forecast and comparing it to the original plan, as experience accumulates. If the results differ from the original forecast, Gallagher will determine the cause of the variation and analyze the likelihood of it continuing.
- Consistently monitor the results of the health management/wellness program.

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EXHIBIT B COMPENSATION DISCLOSURE STATEMENT

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

Line of Coverage	Insurance Company	Effective Date	Commission ¹ / Supplemental Compensation ²	Direct Fees ³
Consulting Services	N/A - Gallagher	09/01/2015	N/A	\$10,500 per year

It should also be noted that:

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

For Employers and Plan Sponsors Subject to ERISA: This Disclosure Statement is being given to the Client (1) to make sure Client knows about Gallagher's and Gallagher affiliates' income before purchasing the insurance product and (2) for plans subject to ERISA, to comply with the disclosure, acknowledgment and approval requirement of Prohibited Transaction Class Exemption No. 84-24⁴, which protects both Client and Gallagher⁵. Disclosure must be made to an independent plan fiduciary for the ERISA Plan(s), and Client acknowledges and confirms that this is a reasonable transaction in the best interest of participants in its ERISA Plan(s).

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

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

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

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

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

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

On motion (15-254) of Commissioner Murphy and the second of Commissioner Moody to approve the Consulting Agreement between Gallagher Benefit Services and Crawford County Kansas for one year in the amount of \$10,500 and Authorize the Chairman to Sign.

Yeas: Commissioners Moody, Wood, and Murphy

Nays:

Present but not voting:

Absent or not voting:

The motion prevailed.

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Item Two: Commissioner Moody wondered if the commission meeting on Tuesday, September 8 will be needed. The Commissioners decided to wait until the meeting on Friday, September 4, 2015, to see if they need to meet on the following Tuesday.

Item Three: Commissioner Wood mentioned that the crews are about to finish up on the chip & seal projects in the county. Mr. Wood also stated that he felt that the meeting with the Wellness Committee went well and hopes that they can develop some programs that will benefit the county. The other Commissioners agreed and stated that they both think that the county is making progress on these health issues.

EXECUTIVE SESSION

UNDER THE HEADING FUTURE BUSINESS AND ANNOUNCEMENTS

FUTURE BUSINESS:

Item One: September 4, 2015 – 9:00 AM Work Session regarding personnel policy revisions.

ANNOUNCEMENTS:

Item One: September 1, 2015 – 11:30 AM - Meeting at the old landfill with representatives from Deffenbaugh, Triad, KDHE, the County Commissioners and County Counselor Jim Emerson.

Item Two: September 7, 2015 – The Courthouse will be closed in observance of the Labor Day Holiday.

Item Three: September 10, 2015 – The SEK County Officials semiannual meeting at the old Moline School Building in Elk County, Kansas.

UNDER THE HEADING MOTION TO ADJOURN

MOTION TO ADJOURN

Item One: Adjournment

On the motion of Commissioner Murphy and the second of Commissioner Moody to adjourn the [September 1, 2015](#) meeting of the Board of Crawford County Commissioners at 11:44 **AM** and to reconvene at the next regularly scheduled time with open doors.

Yeas: Commissioners Moody, Wood, and Murphy

Nays:

Present but not voting:

Absent or not voting:

The motion prevailed.

In Testimony whereof, I have hereunto set my hand and caused to be affixed my official seal and submitted these minutes for the approval of the Board of Crawford County Commissioners:

Board of Crawford County Commissioners

Don Pyle
County Clerk

◇

This submission completed at the Crawford County Courthouse in Girard.
Taken by DPP 9/01/15 at 10:14 AM, Amended by DPP 9/01/15 at 4:49 PM/amended BKW 09/03/2015 8:34 AM