

**RESOLUTION 2011-11**

1-31-11

**RESOLUTION BY THE ADMINISTRATION, PERSONNEL, POLICY AND LEGAL COMMITTEE AUTHORIZING THE RENEWAL OF THE CONTRACT WITH DIVERSIFIED BENEFIT SERVICES INC. FOR THIRD PARTY ADMINISTRATION TO THE HEALTH INSURANCE PROGRAM FOR VILLAGE EMPLOYEES**

WHEREAS, the Village's Health Insurance Program relies on the administration by a third party administrator of a Flexible Benefit Plan; and

WHEREAS, the Board of Trustees is satisfied with the present third party administrator which is Diversified Benefit Services Inc.

NOW THEREFORE, the Village Board of the Village of Sturtevant, Racine County, Wisconsin does hereby resolve:

1. That the execution of an agreement with Diversified Benefit Services Inc. for Flexible Benefit Plan third party administration for the village for the year 2011 and 2012 is authorized and approved subject to final review by the Village Administrator.
2. That the annual cost shall be \$4.85 per month per employee or \$100 per month minimum payment.
3. That the authorized Flexible Benefit Plan Agreement for the Village is set forth in Exhibit A which is attached hereto and incorporated herein.
4. The Village President and the Village Clerk are authorized to sign any agreements or other documents necessary to carry out the intent of this resolution;

Adopted by the Village Board of the Village of Sturtevant, Racine County, Wisconsin, this 1<sup>st</sup> day of February, 2011.

Village of Sturtevant

By \_\_\_\_\_  
Steven Jansen, President

Attest \_\_\_\_\_  
Mary Cole, Village Clerk

**Village of Sturtevant  
Flexible Benefit Plan  
Agreement for Service**

**01/01/2011 – 12/31/2012**

# Exhibit A- Resolution 2011-11

This Agreement for Third Party Administration Services ("Agreement") is made and entered into between Diversified Benefit Services, Inc. hereinafter referred to as "DBS" and the Employer designated on page (4) hereinafter referred to as "Employer".

**WHEREAS**, Employer has engaged DBS as a Third Party Administrator ("TPA") to provide Section 125 – Flexible Benefit Plan – FSA ("Plan") services ("Services") for the Plan sponsored by the Employer;

**WHEREAS**, DBS is making available FSA administrative and other related services to be established by the Employer and designed to comply with Section 125 of the Internal Revenue Code (the "Code");

**WHEREAS**, the FSA administrative services incorporates professional material, and internally developed DBS corporate information;

**NOW THEREFORE**, in consideration of the mutual promises and agreements contained herein the parties hereto agree as follows:

1. DBS agrees to make available the Flexible Benefit Plan to be used as the Employer Flexible Benefit Plan. Employer agrees not to disclose details of the Plan to other parties or copy any materials provided, except for auditors, attorneys, and others to whom disclosure is legally required, unless DBS gives permission to do so.
2. Employer retains DBS as Plan Agent for the Employer Flexible Benefit Plan and authorizes DBS to perform all functions necessary to prepare, implement, and operate the Employer Flexible Benefit Plan.
3. Employer agrees to provide data that DBS needs in communication and enrollment of the Flexible Benefit Plan. Employer also agrees to make the necessary payroll deductions and assist DBS in implementing and operating the Plan.
4. Employer recognizes that certain owners and their family members may not be eligible to participate in the Flexible Benefit Plan (including the pre-tax premium portion of the Plan). The Employer agrees to contact their legal counsel as needed to determine whether their owners and family members can participate. The Employer further agrees not to provide DBS with enrollment information on the owners and family members if it is determined said persons are ineligible to participate.
5. DBS services may include some or all of the following items (as needed): restatement of a Flexible Benefit Plan document, Summary Plan description, ancillary forms, employee enrollment, and claims recordkeeping. In addition, annual non-discrimination testing required under Code Section 125 may be completed only if the Employer agrees to provide all Plan contribution information to DBS, including any group insurance premium contributions and key / highly compensated employee information (including salaries). Only dependent care testing can be completed if the Employer elects not to provide group insurance premium contribution amounts to DBS. The testing will be completed only if the Employer provides timely and complete information. Other package services specified in the attached Schedule A may be provided as noted by the Employer.
6. Employer agrees to pay to DBS the fees for services as listed in the attached Schedule A. If the Employer elects to have the employee pay the monthly ongoing administration fee and an employee terminates with a balance in an account, the Employer shall be responsible for the monthly fee from that point forward. In addition, Employer recognizes that the Plan allows employees to submit claims after Plan year end for a specified period in accordance with the Plan Document. Employer understands and agrees that during this Plan year run out period, fees will be invoiced on the same basis as the previous months of the Plan year and will be for the run out period. This will be shown as a separate line item on the invoice. In addition, a separate line item on the invoice will be for services pertaining to the new Plan year coverage period.
7. Employer monthly invoices are due upon receipt. If the invoice is not paid within 30 days of the date shown on the invoice, DBS reserves the right to cease performing services under this Agreement.
8. Any overpayments to employees as a result of the Employer not notifying DBS as to status changes via the DBS Status Change Notification Form or other agreed upon format by both parties as of the claim cut-off date, will be the responsibility of the Employer. Any subsequent bank charges as a result of the aforementioned will be the responsibility of the Employer. Requests by the Employer for processing special checks (meaning checks not processed at the regular claims processing date) due to an employee filing late claim(s), (meaning claim(s) received

by DBS after the claims deadline date), or for lost or stolen checks will be done for a fee of \$25 per check. If an employee or former employee fails to retain original documentation regarding claims submitted to DBS and the employee or former employee requests copies of claims and/or documentation from DBS because of an audit by the IRS or another agency, there will be a fee of \$0.25 per copy made. This will only be authorized by the Employer and will be billed to the Employer if authorization is obtained.

9. With respect to inadvertent overpayments to participants, DBS shall make reasonable efforts to recoup such payments, including offsets to future payments, ACH withdrawals (in the case of direct deposit participants) and a written request to return such overpayments, provided that DBS is notified within sixty days of such overpayments. However, DBS will not be responsible for funding any legal action to recover such overpayments, nor will it be responsible for reimbursing such overpayments to the Employer.
10. Employer agrees to pay to DBS the agreed upon fee indicated for other services listed on attached Schedule. This agreement does not cover any possible future Government imposed costs regarding auditing of Flexible Benefit Plans. Also, it is not within the scope of this Agreement to cover possible future Government imposed costs with regard to filing fees for any Government forms, documents, or year end (5500) reports. The term "Government" shall include but not be limited to the United States Government, Internal Revenue Service, Department of Labor, or a State within the United States.
11. This Agreement shall be exclusive and remain in effect for a period of two full Plan years wherein both parties have signed and dated said Agreement ("Initial Term"), after which time it shall be renewed automatically for successive two Plan year periods ("Renewal Terms"), unless one party notifies the other in writing at least 60 days prior to the renewal date that it does not intend to renew. The renewal date shall be the end of the second Plan year. Notification under Section 11 of this Agreement shall be deemed duly given if delivered by certified or registered mail with postage prepaid to DBS or the Employer.
12. Notwithstanding the preceding paragraphs, either party may terminate this Agreement for cause at any time. "Cause" shall be limited to any of the following reasons: (a) if either party fails to perform its duties hereunder and such failure is not cured within thirty days of receipt of written notice thereof; (b) if all or any portion of the Plan fails to comply with applicable provisions of the Code and regulations thereunder or state regulations; or (c) if some or all of the Plan is not legally or validly implemented.
13. If the Employer terminates the Agreement without cause during the Agreement period ("Initial Term or Renewal Term"), the Agreement must be purchased by the Employer. Such Agreement buyout shall be based upon the fees that would have been charged for the remainder of the Agreement period for such services as future enrollment, monthly administration, miscellaneous, and any package services that may apply. Such fees shall be those as set forth in the attached Schedule A of the Agreement. Payment of the final invoice shall be due upon receipt. If the final invoice is not paid as described, DBS will not process claims and/or reports until full payment is made by the Employer.
14. If the Employer is purchased by another organization and/or merges and/or affiliates with another organization, the terms of this Agreement shall remain in full force and shall be binding until the end of the term of the Agreement unless a buyout of the Agreement is agreed to. Any buyout of the Agreement shall be the fees that would have been charged for the remainder of the Agreement period. Such fees shall be based upon the attached Schedule A of the Agreement including enrollment, monthly administration, miscellaneous, and any package fees that may apply.
15. DBS shall have the right to retain, at its own cost, outside services in preparing, implementing and operating of the Plan.
16. Nothing contained herein shall obligate Employer to utilize DBS as its agent or broker in providing group benefits to employees.
17. Employer recognizes that the Plan Document is an important legal document and that it has been prepared based on the understanding of DBS of the desired provisions. To ensure that the Plan Document conforms to the Employer's situation the Employer should consult with its attorney on the legal and tax implications of the Plan. Employer recognizes that DBS is not a law firm and that DBS employees are not attorneys. Additionally, Employer recognizes that DBS is not an accounting (CPA) firm.
18. Employer recognizes that DBS shall maintain all paper records related to the administration of the Plan for a period of seven years, after which time the documents will be destroyed.

19. Employer agrees to indemnify and hold harmless DBS, its affiliates, and any of its directors, officers or employees with respect to any and all claims, liabilities, losses, damages, or expenses, including reasonable attorneys' fees, incurred by reason of the failure of the Employer to carry out its obligation under this Agreement on a timely and non-negligent basis, unless such failure is based upon the negligence of DBS or any of its employees.
20. DBS agrees to indemnify and hold harmless Employer, its affiliates, and any of its directors, officers or employees with respect to any and all claims, liabilities, losses, damages, or expenses, including reasonable attorneys' fees, incurred by reason of the failure of DBS to carry out its obligation under this Agreement on a timely and non-negligent basis, unless such failure is based upon the negligence of Employer or any of its employees.
21. This exclusive Agreement, including Schedule A, constitutes the entire understanding of the parties and may be modified only in writing executed by both parties. It shall be binding upon both parties and their successors or assigns and shall be interpreted under the laws of the State of Wisconsin.
22. Plan years covered by the "Initial Term" of this Agreement shall be 01/01/2011 - 12/31/2012.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**Village of Sturtevant - "Employer"**

By: \_\_\_\_\_ Title: \_\_\_\_\_

Attest: \_\_\_\_\_ Title: \_\_\_\_\_

**Diversified Benefit Services, Inc. - "DBS"**

By:  Title: President

Witness: \_\_\_\_\_ Title: Sales & Enrollment Coordinator

## Village of Sturtevant Schedule A

### 1. Plan Implementation

Plan Design, Plan Document, Summary Plan Description, Business Associate Agreement, Privacy Practices provided as is. Client generated benefit or Plan changes that require the updating, changing, amending or restating of the Plan Document or Summary Plan Description will be billed separately. Printing of SPD booklets will be billed separately.

Fee: *No Charge for Legal Documents 'as is'*

### 2. Group Meetings

Flexible Benefit Plan group meeting materials provided to the employer for distribution to employees. Group presentation(s) or webinars include communication of the Flexible Benefit Plan and explanation of enrollment materials and how to file a claim for reimbursement.

Fee: \$90/meeting initial plan year; \$50/meeting in subsequent plan years. *(Travel/lodging/meals billed separately if applicable)*

### 3. Employee Enrollment Options & Related Services (Employer May Choose the Type of Enrollment)

- A. **Individual Employee Meetings.** Option A (1) – Comprehensive Individual Employee Meetings: Services will include individual employee enrollment sessions with DBS Benefit Enrollers with a review of the employee flexible benefit Plan worksheet/employee guide and the utilization of the prior plan year. The DBS notebook computer system may be utilized if appropriate. Also includes the completion of enrollment forms and providing employees with an expense reimbursement kit. DBS will provide the Employer with copies of completed enrollment forms if requested. Also includes establishing Plan records on the DBS flexible benefit Plan software administration system, preliminary Plan compliance, election auditing, and other related in-house Plan year setup services. Option A (2) – DBS Enrollers onsite to answer employee questions: DBS Benefit Enrollers will be available for a limited period of time to answer employee questions regarding the plan. Enroller related costs such as travel, lodging, meals may be billed separately if applicable.
- B. **Employer Self-Enrollment.** DBS will provide the Employer with enrollment forms, employee guides, and additional Plan materials for distribution to all eligible employees. An enrollment letter and Plan fact sheet will be provided as well. DBS will supply the Employer with claim forms and/or expense reporting kits as needed. This section also includes establishing Plan records on the Flexible Benefit Plan software administration system, preliminary Plan compliance, election auditing, and other related in-house Plan services. Another option allows for DBS to provide an electronic file of the enrollment materials for Employer to distribute to eligible employees. A third option allows for the employer to send an eligibility/enrollment file electronically to DBS to allow enrollment information to be downloaded into the DBS administration system.
- C. **Online Internet Enrollment.** DBS will provide the Employer with an enrollment instruction letter and Plan information letter that includes a system password for User name and PIN. This will allow employees access to the DBS Website and Online enrollment system. Employees will receive screen confirmation when submitting their election information with print capability. The Employer agrees to distribute the enrollment letter with instructions to all eligible employees. DBS will provide the Employer with copies of completed online enrollment forms if requested. This section also includes establishing Plan records on the Flexible Benefit Plan software administration system, preliminary Plan compliance, election auditing, and other related in-house Plan year setup services.

**Option A Fee:** (1) Comprehensive individual employee meetings with DBS enroller(s): \$10.00/eligible employee/plan year  
(Minimum fee: \$150)

(2) DBS Enrollers onsite to answer employee questions: \$300/enroller/day  
(Minimum fee: \$150)

**Option B Fee:** Self-Enrollment using paper packets or electronic file of materials or eligibility file sent by Employer to DBS: \$3.00/FSA participant/year  
(Minimum fee: \$100)

**Option C Fee:** Online Internet Enrollment: \$3.00/FSA participant/year  
(Minimum fee: \$100)

## Village of Sturtevant Schedule A (continued)

### 4. Record-keeping, Claims processing, and Plan Reporting

- Process claims from Plan participants and issue reimbursements
- A.S.A.P.® Online Account Viewing (Advanced Strategic Administrative Program) package for enhanced administrative user features including claim details, advanced report options and advanced report filtering services. Also includes access to archived Plan year data for all years and related data and ASCII/Excel data format download for certain reports
- Provide employer aggregate Plan reporting for online viewing and printing
- Prepare employee statements as needed
- Process all family status changes including new hires and terminations
- Reissue lost or stolen reimbursement checks
- Provide 800 toll free telephone number for out of area participants
- Provide periodic informational notices as needed

#### Plan Year

#### Monthly Fee Schedule – (FSA Service Only)

01/01/2011 – 12/31/2011

\$4.85/participant/month for service agreement year one

01/01/2012 – 12/31/2012

\$4.85/participant/month for service agreement year two

The above monthly fee includes the following categories: Dependent Care Reimbursement Account, Medical Expense Reimbursement Account and/or the Independent Premium Feature. Employer reports including transaction ledger summary, payments in excess of deposits, account deposit summary, and check register are included in the online service package for the Employer.

**Minimum Monthly Group Administration Fee: \$100.00**

#### Miscellaneous Fees

- I. Postage/UPS Reimbursement: Statements/checks/direct deposit notices mailed directly to Plan participants and packages sent via UPS directly to the client.  
Fee: *First class postage and/or UPS shipping fees*
- II. Customized materials requested by the client: *To be quoted*

#### Optional Services

- I. ACH/EFT service includes account setup with client bank, direct deposit of FSA reimbursements, and transfer of claim payments via ACH from the Employer designated account to the DBS Master 125-FSA account and the mailing of checks and/or direct deposit notices directly to Plan participants.  
Fee: *First Class postage reimbursement*
- II. Annual 5500 & SAR Preparation: Includes data gathering, 5500 & SAR form preparation, answers to questions regarding the form, related W2 questions.  
Fee: *\$350/year (if required for employer)*
- III. Pre-paid stored value card service (debit cards) includes bank account and system set-up, preparation, and administration for the medical reimbursement FSA account. Employer pre-funding of the debit card bank account and additional bank fees due to insufficient funds in the Employer bank account are the responsibility of the Employer. Fees for lost or stolen cards are the responsibility of the Employer or Employee.  
Fee: *\$1.75/participant/month (minimum group fee: \$35.00)*  
*Replacement Card Fee: \$10.00*