



SANTA ROSA COUNTY RISK MANAGEMENT

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6495 Caroline Street, Suite I | Milton, Florida 32570

Memorandum

To: Santa Rosa County Board of Commissioners

From: DeVann Cook, Director, Human Resources

Through: Tony Gomillion, County Administrator

Re: Fiduciary First Indemnity Documents

Date: October 4, 2016

RECOMMENDATION

Approve the attached Plan Resolution and Indemnity Agreement, as recommended by Fiduciary First.

BACKGROUND

As part of Fiduciary First's evaluation and review of Santa Rosa County's Deferred Compensation program, they recommend forming a working group to give suggestions and recommendations related to program changes. To minimize any potential personal exposure to the members, they recommend this group be approved by and indemnified by the Board of County Commissioners. The Plan Resolution and Indemnity Agreement are provided by Fiduciary First.

Attachments

cc: R. Andrews

RESOLUTION NO. 2016 - ____

Be it known, that the Santa Rosa County Board of County Commissioners, an adopting employer to the Santa Rosa County Board of County Commissioners 457(b) Deferred Compensation Plans, hereby resolves the following.

Resolved, that a Plan Working Group is hereby established to monitor the operation of the Plans and coordination or supervision of various plan service providers.

Resolved, that the Plan Working Group will include but not be limited to various individuals in the position of:

County Administrator
Human Resources Director
Budget Director
Finance Director

Resolved, that the Plan Working Group is empowered to make decisions regarding the general operation of the Plans, engage vendors to provide service to the Plan and any decision requiring the continued compliance of applicable plan rules and regulations subject to review and approval by the Board of County Commissioners.

This resolution hereby is incorporated into the minutes of the Plan. Having met and duly resolved the items above, the Santa Rosa County Board of County Commissioners hereby authorize and certify the above matters.

PASSED AND ADOPTED this 13th day of October, 2016, by a vote of __ yeas, __ nays, and __ absent of the Board of County Commissioners of Santa Rosa County, Florida.

**BOARD OF COUNTY COMMISSIONERS
SANTA ROSA COUNTY, FLORIDA**

ATTEST:

By: _____
Lane Lynchard, Chairman

Donald C. Spencer, Clerk of Court

DRAFT

INDEMNITY AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, but is effective for all purposes as of ____ day of _____, 20____, by and between Santa Rosa County Board of County Commissioners (hereinafter referred to as the “Indemnitor”) and Tony Gomillion, DeVann Cook, Jayne Bell, and Mike Burton (hereinafter referred to as the “Indemnitees”).

WITNESSETH:

WHEREAS, the Indemnitor, and The Santa Rosa County Plan Working Group serve as the plan administrators for the Santa Rosa County Board of County Commissioner’s 457(b) Deferred Compensation Plans (“Plans”) sponsored by the Indemnitor; and

WHEREAS, the Indemnitor, and The Santa Rosa County Plan Working Group, as the plan administrators of the Plans, are authorized to designate one or more individuals to perform certain duties required of the plan administrators for the Plans; and

WHEREAS, the Indemnitor, and The Santa Rosa County Plan Working Group have asked the Indemnitees to serve as an agents for the plan administrators with respect to the various retirement plan functions; and

WHEREAS, the Indemnitor has asked the Indemnitees to serve as the “Plan Working Group Members” responsible for compliance with federal privacy requirements imposed upon the Indemnitor; and

WHEREAS, as the agent for the plan administrators of the Plan, the Indemnitees are to be responsible for various administrative functions with respect to the Plan for the benefit of the employees of the Indemnitor, and will perform such functions without additional compensation from the Plan or the Indemnitor; and

WHEREAS, the Indemnitor believes that it is in the best interests of the Indemnitor, and their employees, for the Indemnitees to serve as the agents for the plan administrators of the Plan and is willing to indemnify the Indemnitees as hereinafter provided.

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements contained in this Agreement, it is hereby agreed as follows:

1. **INDEMNIFICATION GENERALLY**. Subject to and upon the terms and conditions of this Agreement, the Indemnitor hereby agrees to indemnify the Indemnitees, jointly and severally, with respect to any and all claims, losses, damages and expenses which may be incurred by the Indemnitees as a result of or arising out of:

- (A) any threatened, pending, or completed action, suit or proceeding, whether brought by or in the right of the Indemnitor or otherwise and whether of a civil, criminal, administrative or investigative nature, in which the Indemnitees or any one or more but not all of them may be or may have been involved as a party or otherwise, arising out of the fact that the Indemnitees are or were an agent of the plan administrators of the Plan and/or a Plan Working Group Member;
- (B) any attempt (regardless of its success) by any person to charge or cause any one or more of the Indemnitees to be charged with wrongdoing or with financial responsibility for damages arising out of or incurred in connection with the matters indemnified against in this Agreement; or
- (C) any expense, assessment, fine, tax, judgment or settlement payment arising out of or incident to any of the matters indemnified against in this Agreement, including reasonable fees and disbursements of counsel (before and at trial, and in appellate proceedings).

2. **LIMITATION**. Nothing in the Indemnity Agreement shall be deemed to relieve the Indemnitees of any liability that may be incurred by way of:

- (A) a violation of the criminal law, unless the Indemnitees had reasonable cause to believe their conduct was lawful and no reasonable cause to believe such conduct was unlawful;
- (B) a transaction in which the Indemnitees derived an improper personal benefit;
- (C) willful misconduct or gross negligence in the performance of their duties; or
- (D) conduct pursuant to then-applicable law that prohibits such indemnification.

3. **LEGAL ACTION**. Whenever any claims shall arise for indemnification under this Agreement, the affected Indemnitees shall notify the Indemnitor promptly and in any event within 30 days after the Indemnitees have actual knowledge of the facts constituting the basis for such claim. Regardless of whether Indemnitor undertakes to defend such suit or other actions, it shall be bound by the terms of any judgment or settlement arrived at therein and shall pay all costs of the Indemnitees as provided herein.

4. **TERM**. This Agreement shall be effective as of _____ day of _____, 20____ and shall continue in full force and effect until the date six years after the date of this Agreement, or six years after the termination of any Indemnitees' employment by the Indemnitor, whichever is later, provided that such term shall be extended by any period of time during which the Indemnitor is in breach of a material obligation to the Indemnitee, plus ninety days.

5. **INSURANCE COVERAGE**. The Indemnitor may acquire, on behalf of the Indemnitees, insurance coverage against any liability that the Indemnitees may incur as a result of any act or failure to act in their capacities as agents for the plan administrators for the Plan or as Plan Working Group Members, in such an amount as the Indemnitor, at its sole discretion, may deem to be appropriate. If the Indemnitor elects to

acquire such coverage, the Indemnites shall provide the Indemnitor with reasonable assistance in acquiring such coverage.

6. **BINDING EFFECT**. This Agreement shall be binding upon and inure to the benefit of the successors in interest and assigns, heirs and personal representatives, as the case may be, of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the ____ day of _____, 20____.

By: Layne Lynchard
Its: Chairman, Santa Rosa County Board of
County Commissioners
“INDEMNITOR”

“INDEMNITEES”