

Board of Trustees Agenda Item

Board Meeting Date: February 1, 2010

Title of Item:

Property/Liability Insurance Brokerage Client Service Agreement Renewal

Background and Analysis:

This past fall our current insurance brokerage team changed firms. Because of longstanding quality service and competitive pricing, staff recommended retaining the relationship with this team through the April 2010 insurance renewal cycle. At the November 2, 2009, meeting of the Board staff was authorized to take this action. Since that time, staff has worked to negotiate contract terms and conditions. After this year's renewal, and as previously communicated to the Board, staff will develop and issue an RFP for insurance brokerage services and return to the Board with a recommendation for these services.

Attached is the annual Broker's renewal of the Client Service Agreement for property and liability insurance with the Foothill-De Anza Community College District. The agreement also includes other smaller insurance policies necessary for the District and professional staff servicing of the District's insurance needs. The Risk Management office was able to negotiate savings of \$4,774 for this renewal. The annual fee is \$90,707. The annual servicing cost had remained relatively flat for the previous three years.

The Board is asked to approve renewal of the District's Client Service Agreement with Arthur J. Gallagher & Co. Insurance Brokers of California, Inc.

Recommendation: (specify if information only)

Vice Chancellor Andy Dunn recommends approval.

Submitted by:	Marsha Kelly
Additional contact names:	Andy Dunn
Is backup provided?	Yes

Compensation Agreement

Foothill-De Anza Community College District & Arthur J. Gallagher & Co. Insurance Brokers of California, Inc.

THIS COMPENSATION AGREEMENT is made and entered into and effective January 3, 2010 and between Foothill-De Anza Community Service, a community college in the State of California ("Client"), and Arthur J. Gallagher & Co. Insurance Brokers of California, Inc., a California corporation ("Gallagher").

I. TERM AND TERMINATION

This Agreement shall commence on the Effective Date for a term of one (1) year and shall automatically renew on the first anniversary of the Effective Date and annually thereafter for additional one- (1) year terms but may be terminated by either party at any time upon thirty (30) days prior written notice.

II. OBLIGATIONS OF GALLAGHER

Gallagher will provide the services set out on Exhibit A attached hereto (collectively, the "Services") to Client. If the Services include the placement of insurance coverages, Gallagher will use its commercial best efforts to secure such insurance coverages on Client's behalf. In the event an insurance company cancels or refuses to place such insurance coverages, Gallagher will use its commercial best efforts to obtain the coverage from another insurance company. Further, Gallagher agrees to represent the Client honestly and competently.

III. OBLIGATIONS OF CLIENT

Client shall pay Gallagher an annual fee of \$90,707.00 for the term beginning on January 3, 2010 until January 3, 2011. This fee has been previously disclosed to Client. This fee is NOT refundable. Such fee may be revised at the time of renewal of this Agreement by the execution of an amendment to this Agreement signed by the parties hereto. Gallagher may charge Client, and Client agrees to pay, additional fee(s) for the services listed below.

None

Following are the nature and amount of all fees known to Gallagher that will be charged by persons other than Gallagher or the insurance company in connection with current placement of Client's insurance. These fees are not retained by Gallagher: None.

IV. DISCLOSURES

A. In addition to such fees and commissions provided herein, Gallagher may also receive investment income on fiduciary funds temporarily held by it, such as premiums or return premiums. Other parties, such as excess and surplus lines brokers, wholesalers, reinsurance intermediaries, underwriting managers, captive managers and similar parties, some of which may be owned in whole or in part by Gallagher's corporate parent, may earn and retain usual and customary commissions and fees in the course of providing insurance products to clients. Gallagher may also participate in contingent commission arrangements with insurance companies that provide for additional contingent compensation if underwriting, profitability, volume or retention goals are achieved. Such goals are typically based on the total amount of certain insurance coverages placed by Gallagher with the insurance company, not on an individual policy basis. Any such fees or commission will not constitute compensation to Gallagher under Section III. above.

- B. Gallagher's fees under this Agreement shall be earned on the Effective Date (and any renewal thereof), and payable on invoicing. Client is responsible for payment of premiums for all insurance placed by Gallagher on its 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 Client. In addition, and not in lieu of the right to terminate, Gallagher reserves the right to apply return premiums or any other payment up to \$5,000 received by Gallagher on Client's behalf to any amounts owed by Client to Gallagher unless such return premiums or other payments are disputed by Client.
- C. Where applicable, insurance coverage placements which Gallagher makes on Client's behalf, may require the payment of federal excise taxes, surplus lines taxes, stamping or other fees, to the Internal Revenue Service (federal), various state(s) departments of revenue, state regulators, boards or associations. In such cases, Client is responsible for the payment of such taxes and/or fees, which will be identified separately by Gallagher on invoices covering these placements. Under no circumstances will these taxes or other related fees or charges be offset against the amount of Gallagher's brokerage fees or commissions referred to herein.
- D. Gallagher will not be operating in a fiduciary capacity, but only as Client's broker, obtaining a variety of coverage terms and conditions to protect the risks of Client's enterprise. Gallagher will seek to bind those coverages based upon Client's authorization, however, Gallagher can make no warranties in respect to policy limits or coverage considerations of the carrier. Actual coverage is determined by policy language, so read all policies carefully. Contact Gallagher with questions on these or any other issues of concern.

V. INDEMNIFICATION

- A. Gallagher agrees to indemnify and hold Client harmless from any loss, cost, damage, or expense (including reasonable attorney's fees) arising from the negligent acts or omissions of Gallagher.
- B. Client agrees to indemnify and hold Gallagher harmless from any loss, cost, damage, or expense (including reasonable attorney's fees) arising from the negligent acts or omissions of Client, including any financial obligation to pay premiums to any insurance company.

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

ARTHUR J. GALLAGHER & CO.
INSURANCE BROKERS OF CALIFORNIA,
INC.

FOOTHILL-DE ANZA COMMUNITY
COLLEGE DISTRICT

By: _____

By: _____

Name: Susan Blankenburg

Name: Marsha C. S. Kelly

Title: _____

Title: Director, Risk Management

California Broker License No. _____

"In case of any questions or problems concerning broker fees or insurance, contact the California Department of Insurance at 1-800-927-HELP."

[Client Name & Licensed Legal Name of Branch]

STANDARD BROKER FEE DISCLOSURE

This disclosure was prepared by the California Insurance Commissioner. Please READ IT CAREFULLY!

- I. Do not sign any broker fee agreement unless all of its blank lines and spaces have been filled in and you have read this entire document and the agreement carefully.
- II. Your insurance broker represents you, the consumer, and is entitled to charge a broker fee if he/she chooses. This fee is not set by law, and may be negotiable between you and the broker.
- III. It is illegal for an insurance broker to charge you a fee for placing coverage solely with the California Automobile Assigned Risk Plan or the California FAIR Plan. Fees may be charged for placement of other coverages.
- IV. Broker fees are often non-refundable even if you cancel your coverage. Refer to your broker fee agreement to see if your broker fee is non-refundable. However, you may be entitled to a full refund of a broker fee if your broker acted incompetently or dishonestly. Unresolved disputes over non-refunded broker fees can be forwarded to the Department of Insurance for review.
- V. You are entitled to obtain and keep a completed copy of this disclosure and any broker fee agreement you sign.
- VI. Your broker may receive commission from insurance company(ies) for placing your insurance. This commission may be paid to your broker by the insurance company(ies) in addition to any broker fee you pay.
- VII. If you will be paying your premium in installments to a finance company, by law you must receive a copy of a premium finance disclosure and agreement. Be sure to obtain and read those documents before signing a premium finance agreement. Also, ask the broker if the insurer offers its own installment payment plan. Insurer installment plans are often cheaper than premium financing through a separate premium finance company.
- VIII. If your broker is placing automobile coverage, your broker must provide you with a copy of the Department of Insurance pamphlet Automobile Insurance. If your broker is placing residential coverage, your broker must provide you with a copy of the Department of Insurance pamphlet Residential Insurance. By signing this disclosure you acknowledge receipt of the appropriate pamphlet(s).

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

Marsha C. S. Kelly, Director, Risk Management

Client initials: _____