

RESOLUTION NO. 2022-51

RESOLUTION APPROVING A HEALTH BROKER CHANGE TO COTTINGHAM BUTLER FOR EMPLOYEE BENEFITS AND ENTERING A 28E INTERGOVERNMENTAL AGREEMENT WITH IOWA COMMUNITY TRUST GOVERNMENTAL HEALTH AND RELATED BENEFITS PROGRAM

WHEREAS, city staff have met with several health and benefits brokers, and

WHEREAS, a salary survey committee consisting of four staff members and two council members discussed different brokers; and

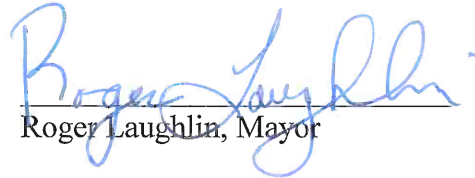
WHEREAS, it is necessary for the City of West Branch to enter an intergovernmental agreement to join a large group insurance plan; and

WHEREAS, with much consideration between admin staff, department supervisors, and the salary survey committee they are hereby recommending Cottingham Butler as the City of West Branch's health insurance and benefits broker.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of West Branch, Iowa, that the Mayor and City Clerk are authorized to enter an agreement with Cottingham Butler and are authorized to execute a 28e intergovernmental agreement with Iowa Community Trust is hereby approved.

\* \* \* \* \*

Passed and approved this 16<sup>th</sup> day of May, 2022.

  
Roger Laughlin, Mayor

ATTEST:

  
Leslie Brick, City Clerk



**IOWA COMMUNITY TRUST  
GOVERNMENTAL HEALTH AND RELATED BENEFITS PROGRAM**

**28E ARTICLES OF AGREEMENT**

WHEREAS, The Governmental Entities listed in Addendum A (participating agencies) desire to join together for the operation of a health benefits program for their respective employees; and,

WHEREAS, Chapter 28E of The Code of Iowa authorizes the joint exercise of governmental powers that would include a cooperative agreement to create and maintain a health benefits program;

NOW, THEREFORE the participating agencies hereby join together to form the “Iowa Community Trust Health Care Plan.” The following Articles of Agreement shall establish and govern the creation and operation of the Iowa Community Trust Governmental Health and Related Benefits Program.

**ARTICLE I**

SECTION 1. Name. The official name shall be the Iowa Community Trust Governmental Health and Related Benefits Program, (hereinafter referred to as “ICT” or “Group”).

**ARTICLE II**

SECTION 1. Legal Status. This group shall be a voluntary joint undertaking of units of government in joint and cooperative action with private agencies, as authorized by Chapter 28E of the Code of Iowa.

SECTION 2. No Separate Legal Entity. This Agreement shall not establish a separate legal entity to carry out the purposes of this agreement, but creates the Group which shall be a cooperative program funded and operated by the Group’s participating agencies.

**ARTICLE III**

SECTION 1. Participating Agencies. The members of this group shall be identified in Addendum A as originally attached and hereafter amended through joinder of an additional agency or agencies as provided in Article VII.

#### ARTICLE IV

SECTION 1. Purpose. The purpose of this Agreement is to provide for the establishment, continued planning, support and operation of a fully insured health and welfare and related benefits program to provide benefits for the eligible and participating employees of the participatory agencies to this Agreement on an exclusive basis.

SECTION 2. Scope. This Agreement shall apply only to the administration and operation of the health and related benefits program as specified herein.

SECTION 3. Fiscal Year. The Fiscal Year for this Group shall be the annual period commencing each July 1st and ending the next June 30th.

#### ARTICLE V

SECTION 1. Commencement of Operations. The operation of the benefits program shall commence upon the approval of this Agreement by at least two participating agencies at an organizational meeting and the filing of same with the appropriate state entity as required by Iowa law; but in no event later than July 1, 2015. Operations of this Group shall continue until the ICT is dissolved by its members pursuant to the terms of this Agreement.

#### ARTICLE VI

SECTION 1. Extent of Power. The participatory agencies shall have and exercise all powers granted in these Articles and not inconsistent with Iowa law.

SECTION 2. Source of Power. Each participating agency grants to the Group only those rights and powers necessary for the Group to carry out the purpose and functions stated in this Agreement and hereby expressly reserves all other rights and powers. Each participating agency hereby expressly agrees that it shall be solely liable for the payment of all insurance premiums and fees negotiated by the ICT and its appointed and contracted administrator.

SECTION 3. Exercise of Power. In effectuating the purposes outlined in this Agreement, the Group shall have the power to act on its own behalf and initiate actions for the Group through its governing board, except in those matters which these Articles specify are for the approval, rejection and /or modification by specific vote of individual participatory agencies.

## ARTICLE VII

SECTION 1. Membership. A participating agency shall become a member of the ICT through the passing of a formal resolution approving and adopting this Agreement and appointing an official representative to serve on the Board of Directors of this Group. Moreover, each participating agency shall execute an Appointee Election Agreement and the then Applicable Trust Administration Agreement. Each participating agency shall also adopt a resolution appointing an official representative to the governing board of this Group. Each agency shall have one (1) representative who will occupy one (1) seat on the ICT Board of Directors. Upon completion of the above, an ICT director so authorized by the Board of Directors and/or the Bylaws shall accept the resolution of the participating agency and file an updated Addendum A as an exhibit to this Agreement with the appropriate state entity.

At the annual meeting of this Group, each participating agency shall adopt a plan with an effective date concurrent with the Fiscal Year established by the ICT. Each participating agency will be individually underwritten and assigned rates based upon the underwriting requirements of the applicable carrier. By ratifying this Agreement each participating agency hereby agrees to pay all amounts due to the carriers, vendors and administrators of the ICT, resulting from said agency's participation in the ICT.

SECTION 2. Replacement of Representatives. Representatives of a participating agency shall be subject to recall and replacement by their respective agency at any time, in any manner and for whatever cause such agency deems appropriate.

SECTION 3. Duration of Membership. A participating agency of this Group shall continue its membership herein until such time as:

- (a) The agency terminates its membership in the Group as provided herein;
- (b) The agency is expelled as provided herein; or
- (c) The Group ceases operation.

SECTION 4. Termination of Membership. A participatory agency may voluntarily withdraw from membership in the Group at the end of a Group Fiscal Year in the following manner:

- (a) In order to withdraw from membership, the governing authority of a participating agency shall adopt a resolution to withdraw and provide the ICT Board of Directors with written notice of the same not later than April 1st preceding the Group Fiscal Year end at which withdrawal is to be effective;
- (b) Notice of intent to withdraw and a certified copy of the resolution to withdraw shall be sent to the Chairperson of the Board, unless the Chairperson is the representative from the withdrawing agency, in which case

notice shall be sent to the Vice Chairperson;

- (c) In the absence of written notice to withdraw being given by April 1st, a participating agency shall not withdraw until the end of the Group Fiscal Year following the year in which notice is given;
- (d) Termination of membership shall not relieve the withdrawing agency of the obligation to pay all amounts due to the Group nor all amounts due to the carriers, vendors and administrators of the ICT.

SECTION 5. Expulsion of Members. A participatory agency may be expelled from membership in the Group for cause. For the purposes of this Agreement, 'cause' is defined as any of the following:

- (a) The participating agency's violation of one or more of the provisions of these Articles of Agreement, the Bylaws, the Standing Rules of this Group or Iowa law; or

The participating agency's failure to timely remit payment in full of all amounts due to the carriers, vendors or administrators of the ICT.

A participatory agency may be expelled from membership in the Group at any meeting of the Board of Directors at which a quorum is present, by three-fourths (3/4) vote of the directors present at the meeting.

Prior to the Board considering expulsion of any participatory agency from the Group, said agency shall be provided a written notice of the violation and allowed a minimum of thirty (30) days during which said participatory agency shall have an opportunity to correct or remedy the expellable violation.

Expulsion from membership shall not relieve the expelled agency of the obligation to pay its full share of any current expenditures of the Group which have been approved by the Group consistent with these Articles and By-laws, before the expulsion of such member. Expulsion from membership shall further not relieve the withdrawing agency of the obligation to pay all amounts due to the Group nor all amounts due to the carriers, vendors and administrators of the ICT.

## ARTICLE VIII

SECTION 1. Officers. The Board of Directors shall elect from its representatives officers as proscribed in the Bylaws contemplated by Article IX, below.

SECTION 2. Annual Meeting. Beginning with the year 2016, the Annual Meeting of the participating agencies shall be held on the second Tuesday in March. At each annual meeting the election of the Officers of the Board of Directors shall take place and such other business shall be transacted as may be properly presented to such meeting. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day. If the election of Officers shall not be held on the day designated herein for any

annual meeting, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a meeting as soon thereafter as conveniently may be. The Board of Directors, through the enactment of Bylaws pursuant to Article IX below, shall provide the manner in which any additional meetings shall be called. All meetings, including both annual and special meetings, shall be noticed, held and conducted in conformance with Iowa law.

SECTION 3. Quorum. A quorum shall consist of a majority of the votes allocated being present by designated representatives. A majority of those votes present shall be sufficient to conduct ordinary business, except where these Articles or the Bylaws shall otherwise provide.

SECTION 4. Voting. Every designated representative to the Board shall be entitled to vote based on the following allocation of votes:

- (a) One (1) full vote for each participating agency with employees eligible for the benefits under the ICT.

The designated representative shall also be entitled to vote by written proxy. Such written proxy shall identify the designee who will exercise the representative's vote and must be delivered to the Chairperson of the Board by the start of the meeting where said proxy is to be utilized.

SECTION 5. Ordinary Business. Ordinary business of an administrative nature with an insurance carrier, vendor or administrator of the ICT may be conducted by an Officer so designated by the governing board and/or the Bylaws. Otherwise, ordinary business necessary to the continued operation of the Group may be conducted at any meeting of the Board of Directors at which a quorum is present, by a majority vote of the directors present at the meeting.

## ARTICLE IX

SECTION 1. Bylaws and Standing Rules. The Board shall adopt such Bylaws and Standing Rules as are necessary for the operation of the Group and its health care program on an ongoing basis.

SECTION 2. Adoption and Amendments to Bylaws and Standing Rules. Any Bylaws or Standing Rules shall be adopted, repealed or amended as follows:

- (a) Any Bylaws or Standing Rules shall be adopted, repealed, changed, amended or modified at any meeting of the Board of Directors at which a quorum is present, by three-fourths (3/4) vote of the directors present at the meeting.

SECTION 3. Records. The ICT shall keep and maintain records of its meetings in accordance with Iowa law.



## ARTICLE X

SECTION 1. Amendments. These Articles of Agreement may be amended at any meeting of the Board of Directors at which a quorum is present, by three-fourths (3/4) vote of the directors present at the meeting. Notwithstanding the foregoing, any director so authorized by the Board or Bylaws shall amend Addendum A and file the same with the appropriate government entity upon the new membership of any participating agency pursuant to Article VII. Such amendment to Addendum A and addition of a new member agency to the ICT need not be approved by a vote of the directors.

## ARTICLE XI

SECTION 1. Appointment of Business Representative. The Board shall appoint by contract a Group Administrator to provide consultation, advice and negotiation of benefits for a period of three (3) years. Negotiations with insurance carriers will be conducted by this Representative and approved by the Board.

SECTION 2. Legal Responsibility. It is expressly agreed that each individual agency will remain fully liable and responsible to its own employees and beneficiaries with respect to any claim, demand, right or cause of action now in existence or hereafter accruing relating in any manner to any of the health benefits program products or services purchased or administered pursuant to this Agreement and will remain the legal entity against whom any action at law or in equity may be filed by an individual employee or beneficiary. Each individual agency (hereinafter "Indemnitor") hereby agrees to defend, indemnify and hold the ICT, the other participating agencies and any of their officers, agents, administrators and assigns (hereinafter "Indemnitees") harmless from and against any and all suits, claims, damages, losses and expenses, including attorneys' fees, brought or alleged against Indemnitees by Indemnitor or any of Indemnitor's employees or beneficiaries relating in any way to the ICT health benefits program.

SECTION 3. Administrative Fund. The Board may establish a separate administrative fund for the purpose of payment of any costs associated with the operation of the ICT. Administration of this fund shall, including membership contribution levels (if any), fund maintenance and fund expenditure, be determined at any meeting of the Board of Directors at which a quorum is present, by a majority vote of the directors present at the meeting

SECTION 4. Property Ownership. No property, real or personal, shall be acquired or held under this Agreement, except for any administrative fund.

SECTION 5. Contracts. Contracts entered into by the officers with the approval of the Board of Directors shall be binding upon the respective participatory agencies through their representatives as agents for said agencies.

SECTION 6. Renewals. Each participatory agency will be provided renewal information directly from the carriers, vendors and administrators of the ICT. Any change in renewal

pricing will be based on the individual risk factors attributable to the specific participating agency. If renewal rates are not presented by the Group Administrator at the Annual Meeting, Article VII SECTION 4 items (a), (b) and (c) will not be enforced.

**ARTICLE XII**

SECTION 1. Dissolution. This Agreement and the Group shall be dissolved at any meeting of the Board of Directors at which a quorum is present, by three-fourths (3/4) vote of the directors present at the meeting. After all outstanding claims and obligations are paid and terminated, the remaining funds in the Group pool of funds (whether in trust account, checking account or otherwise) shall be divided among the participating agencies on a pro-rata basis according to the respective numbers, based on an average of the current Plan Year enrollment, of employees covered by the health and related benefits program each participating agency has in the Plan; provided, however, an agency, excluding original participating agencies as of July 1, 2015, shall only receive a share of such final distribution if the agency has been a member of the Plan for three (3) preceding years.

**ARTICLE XIII**

SECTION 1. Severability. If any provisions of these Articles of Agreement or the application thereof to any agency or circumstance is held invalid, such invalidity shall not affect other provisions or application of these Articles which can be given effect without the invalid provisions or applications, and to this end, the provisions of these Articles are declared to be severable.

**Group**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

*Roger Laughlin - MAYOR*  
*5-16-22*

**C&B Representative**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_





IOWA COMMUNITY TRUST  
GOVERNMENTLA HEALTH AND RELATED BENEFITS PROGRAM

ADDENDUM A

ENTITIES PARTICIPATING IN THE 28E AGREEMENT

**Group**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

*Roger Laughlin*  
*5-16-22*

**C&B Representative**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



## Cottingham & Butler

### Cottingham & Butler Compensation Agreement

This Agreement made as of the 1st day of July, 2022 (“Effective Date”) between City of West Branch, an Iowa corporation with an address of 110 N Poplar St., West Branch, IA 52358 (“Client”) and COTTINGHAM & BUTLER INSURANCE SERVICES, INC., an Iowa corporation with an address of 800 Main Street, Dubuque, IA 52001 (“Cottingham & Butler”) (each individually a “party” and collectively “parties”)

At Client’s request, Cottingham & Butler has agreed to provide certain consulting and advisory services with respect to Client’s benefit program(s) on the terms and conditions set forth in this Agreement.

THEREFORE, Client and Cottingham & Butler agree as follows:

1. **Term of Agreement.** This Agreement shall commence on the Effective Date and shall remain in full force and effect for a term of one year. This Agreement shall automatically renew on the first anniversary of the Effective Date and annually thereafter for additional one-year renewal terms. In the event of nonpayment by Client, Cottingham & Butler may suspend further services to Client for a period of not less than fifteen (15) days. If the outstanding invoice(s) are not paid within such time period, Cottingham & Butler may terminate this Agreement effective immediately.
2. **Cottingham & Butler Duties.** Cottingham & Butler will consult with and advise Client regarding the following matters (“Services”):
  - a. Health plan analysis and benchmarking.
  - b. Expected health plan costs and employee contribution analysis and recommendations.
  - c. Health plan marketing.
  - d. Employee communication and education tools and materials regarding benefits serviced under this agreement.
  - e. Developing executive summaries to provide information for long-term guidance.
  - f. Review of health plan costs relative to the benchmarks.
  - g. Analysis and market search for renewal considerations.
  - h. Renewal proposals.
  - i. Legislative updates.



## Cottingham & Butler

- j. Provide access to C&B sponsored webinars.
  - k. Provide quarterly Benefits newsletter via email.
  - l. Review carrier and program options for other employee benefits offered such as life, disability, voluntary programs, worksite programs, dental, vision, flexible spending, etc.
3. **Changes.** Client may, with the prior written approval of Cottingham & Butler, which shall be given or withheld in its sole and absolute discretion, issue written directions for additional, ancillary, or modified Services within the general scope of Services. Any fees related to such additional, ancillary, or modified Services shall be set forth in writing.
4. **Disclosure.** C&B may enter into agreements with some insurance carriers through which it is compensated for services provided on behalf of the carriers. This compensation is based on several factors such as overall volume, growth, and in some cases profitability of the aggregate premium placed with such carriers. C&B subsidiaries may also receive compensation for services such as utilization review, case management and claims handling performed directly for the insurance carriers.

C&B's objective in recommending insurance carriers and coverages is to provide you, our client, with options for your consideration and selection. We will provide you with additional information, upon request, regarding payment C&B receives, in addition to the fee payment referred to herein, that relates to your account.

5. **Client Duties.** Client agrees to appoint Cottingham & Butler as Client's continuing Broker of Record for all contemplated health insurance matters. Client agrees to cooperate fully with Cottingham & Butler on all matters pertaining to insurance including providing Cottingham & Butler with accurate data concerning its current health insurance programs, past insurance history and all other information requested by Cottingham & Butler.

Moreover, Client agrees to:

- a. Pay Cottingham & Butler the fees outlined in Paragraph 6 of this Agreement, which fees may be revised at the time of renewal of this Agreement by the execution of an amendment to this Agreement signed by the parties.
- b. Provide the information requested by Cottingham & Butler in as timely a manner as necessary for the performance of the Services listed in Paragraph 2 above.
- c. Appoint Cottingham & Butler as Broker of Record on all lines of its insurance related to Employee Benefits, including, but not limited to: Medical, Dental, Vision, Life, Disability, Voluntary Programs, Worksite Programs, Flexible Spending, etc.



## Cottingham & Butler

6. **Service Fee.** Client shall pay to Cottingham & Butler all invoiced amounts for Services rendered by Cottingham & Butler in accordance with this Agreement.

Invoices for Services will be submitted monthly in the amount of \$50.00 PEPM by Cottingham & Butler for payment by Client based on the monthly enrollment. Payment is due upon receipt and is past due thirty (30) business days from receipt of invoice. If Client has any valid reason for disputing any portion of the invoice, Client will notify Cottingham & Butler within thirty (30) calendar days of receipt of invoice from Cottingham & Butler. If no such notification is given, the work and fees evidenced by the invoice shall be deemed accepted by Client. If a portion of an invoice is disputed, any portion of Cottingham & Butler's invoice and any future invoices not in dispute shall be paid in accordance with the procedures set forth herein.

Failure to pay may result in suspension of services and possible contract termination in accordance with section (1) of this Agreement.

Cottingham & Butler's fees under this Agreement shall be fully earned on the execution of this Agreement (and any renewal thereof), and payable on invoicing as outlined above.

7. **Limitation of Liability.** The Client agrees to defend, indemnify, and hold harmless Cottingham & Butler and its employees, agents, directors, officers, affiliates and subsidiaries from any and all loss, damage, liability, judgments, claims and expenses, including reasonable attorney fees, arising out of or related to:
- a. The Client's performance, or lack thereof, of its duties and obligations under its insurance programs or this Agreement;
  - b. The good faith performance by Cottingham & Butler of its duties to the Client under this Agreement; and
  - c. Actions taken by Cottingham & Butler at the direction of the Client.

Client further agrees to indemnify Cottingham & Butler for attorneys' fees and related legal costs resulting from or in connection with Client's breach of this Agreement (including, but not limited to, its indemnification obligations contained in Par. 7), as well as for attorneys' fees and related legal costs resulting from Cottingham & Butler's efforts to enforce the terms of this Agreement.

Cottingham & Butler shall have the right to control the defense and any settlement of a claim or suit.

In no event shall Cottingham & Butler be liable to Client for indirect, special, incidental, or consequential damages, even if Client and Cottingham & Butler have been advised of the possibility of such damages.



## Cottingham & Butler

No action, regardless of form, arising out of the services under this Agreement may be brought by either party more than three years after the act, event or service that is the subject of such action, or one year after the discovery of such act, error or omission, whichever occurs last.

8. **Confidentiality.** The recipient of any Confidential Information will not disclose that Confidential Information, except to affiliates, employees, and/or agents who need to know it and who have agreed in writing to keep it confidential. The recipient will ensure that those people and entities use Confidential Information only to exercise rights and fulfill obligations under this Agreement and that they will keep the Confidential Information confidential. The recipient may also disclose Confidential Information when required by law after giving the disclosing party reasonable notice and the opportunity to seek confidential treatment, a protective order or similar remedies or relief prior to disclosure. Confidential Information shall not include information that: (1) the receiving party knew before it was disclosed by the disclosing party; (2) becomes public knowledge through no fault of the receiving party; (3) the receiving party obtains from sources other than disclosing party who owe no duty or confidentiality to the disclosing party; or (4) the receiving party independently develops. Separate HIPAA agreements may be required. The term "Confidential Information" means all business or technical information of the disclosing party, whether it is received, accessed or viewed by the receiving party in writing, visually, electronically or orally. Confidential Information shall include, without limitation, technical information, marketing and business plans, databases, specifications, formulations, tooling, prototypes, sketches, models, drawings, specifications, procurement requirements, samples, computer software (source and object codes), forecasts, identity of or details about actual or potential customers or projects, techniques, inventions, discoveries, know-how and trade secrets. "Confidential Information" also includes all such business or technical information of any third party that is in the possession of the disclosing party.
9. **Insurance Requirement.** THIS COMPENSATION AGREEMENT IS NOT AND SHALL NOT BE INTERPRETED OR CONSTRUED (a) AS A SUBSTITUTE FOR ANY HEALTH BENEFITS OR (b) AS AN AGREEMENT TO PROVIDE SUCH HEALTH INSURANCE OR BENEFITS.
10. **Relationship of the Parties.** Cottingham & Butler shall perform all Services as an independent contractor, and nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of employer and employee between the parties herein or any affiliates or subsidiaries thereof, or to provide either party with the right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other party.
11. **Intellectual Property.** Cottingham & Butler shall retain all copyright, patent, trade secret and other intellectual property rights Cottingham & Butler may have in anything created or developed by Cottingham & Butler for Client under this Agreement ("Work Product"). Cottingham & Butler shall grant Client a nonexclusive worldwide license to use the Work Product during the term or any renewals of this Agreement.



# Cottingham & Butler

- 12. **Integration.** This Agreement sets forth all the terms, conditions, and agreement of the parties, and supersedes former agreements relating to the same subject matter. There are no other terms, conditions, or agreement except as herein provided and no amendment or modification of this Agreement shall be effective unless reduced to writing and executed by the parties.
- 13. **Waiver.** Failure by either party at any time to enforce any obligation of the other party, to claim a breach of any term of this Agreement, or to exercise any power agreed hereunder will not be construed as a waiver of any right, power or obligation under this Agreement
- 14. **Jurisdiction/Venue.** The law of Iowa will be controlling in all matters relating to the interpretation and validity of this Agreement. The parties agree that the Iowa District Court in and for Dubuque County, Iowa shall be the sole and proper venue for any claims or suits brought by either party relating to this Agreement.
- 15. **Severability.** If any provision of this Agreement is found to be invalid, illegal, null, or void by a court of competent jurisdiction, the Agreement shall be interpreted as if such provision(s) were deleted and the remaining provisions of the Agreement shall remain in full force and effect.
- 16. **Authority.** The undersigned parties represent and warrant that they have authority to execute this Agreement, all necessary corporate actions have been taken to authorize its signing, and it is binding upon Client and Cottingham & Butler, respectively.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

City of West Branch

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

*Bogor Laughlin*  
Company Officer

Cottingham & Butler, Inc.

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

Company Officer

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

*MAYOR*

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