

# FORSYTH COUNTY

## BOARD OF COMMISSIONERS

MEETING DATE: DECEMBER 17, 2020 AGENDA ITEM NUMBER: 16A -16B

**SUBJECT:**

- A. RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT WITH MARK III BROKERAGE, INC., TO PROVIDE BROKERAGE CONSULTING SERVICES (FINANCE DEPARTMENT)
- B. RESOLUTION AWARDED AND AUTHORIZING EXECUTION OF A CONTRACT BETWEEN FORSYTH COUNTY AND MARK III BROKERAGE, INC. FOR COMPREHENSIVE EMPLOYEE BENEFITS CONSULTING SERVICES FOR INSURANCE, FLEXIBLE SPENDING ACCOUNTS, SHORT- AND LONG-TERM DISABILITY, AND WELLNESS INITIATIVES

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS: Recommend Approval

**SUMMARY OF INFORMATION:**

- A. An agreement between Mark III Brokerage, Inc., and the County for benefits consulting services beginning January 1, 2019, until December 31, 2020.
- B. County staff prepared a request for proposals (RFP) and solicited proposals from 36 benefit consulting firms interested in providing services to the County. Five firms responded by submitting proposals. The firm with the lowest costs, meeting the specifications of the RFP and providing the most comprehensive services is Mark III Brokerage, Inc. (Mark III). Mark III's proposal amount is \$35,000 and is guaranteed for three years, with an optional two-year renewal during calendar years 2024 and 2025. The consultant will invoice the County quarterly.

The following firms submitted proposals:

Company	Proposed Cost/Fees	Specifications
Gallagher Benefit Services, Inc.	\$65,000 annually	Met Specifications
Guice Wealth Management	\$60,000 + Commissions annually	Did Not Meet Specifications
Independent Benefit Advisors, Inc.	\$50,000 annually	Met Specifications
Mark III Brokerage, Inc.	\$35,000 annually	Met Specifications
Mercer Health & Benefits LLC	\$90,000 annually	Met Specification

ATTACHMENTS:  YES  NO

SIGNATURE: *J. Dudley Watts, Jr. /AMS* COUNTY MANAGER DATE: December 15, 2020

**RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT WITH MARK III  
BROKERAGE, INC., TO PROVIDE BROKERAGE CONSULTING SERVICES  
(FINANCE DEPARTMENT)**

**WHEREAS** on February 8, 2016, the Forsyth County Board of Commissioners awarded Mark III Brokerage, Inc., a contract for comprehensive employee benefits consulting services for one year beginning January 1, 2016, with an optional two-year annual renewal through December 31, 2018;

**WHEREAS** Mark III Brokerage, Inc., also provided the services as bid and at the same price for the two years ending December 31, 2020, in the absence of a signed contract renewal for same;

**WHEREAS** the Forsyth County Finance Department encumbered the contract for the two additional years and the County continued to receive the services for those two years without formal approval by the Forsyth County Board of Commissioners or the County Manager;

**WHEREAS** fees and commissions from third party benefit providers earned by Mark III Brokerage, Inc., to be conveyed to Forsyth County in accordance with the original bid, offset the payment earned and withheld by Mark III Brokerage, Inc., of \$65,000 for each of the two years; and

**WHEREAS** Mark III Brokerage, Inc., has remitted to the County the excess of its third party fees and commissions over the contractual amounts owed by the County, such that no additional amounts will be owed by the County;

**NOW, THEREFORE, BE IT RESOLVED**, by the Forsyth County Board of Commissioners that the County Manager and Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, an agreement with Mark III Brokerage, Inc., for the provision of benefits consulting services for the calendar years 2019 and 2020, subject to a pre-audit certificate thereon by the County Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney.

Adopted this 17<sup>th</sup> day of December 2020.

**STATE OF NORTH CAROLINA**

**FORSYTH COUNTY**

**AGREEMENT**

THIS AGREEMENT, made and effective this 1st day of January 1, 2019, by and between Forsyth County, North Carolina (the "County"), and Mark III Brokerage, Inc. (the "Provider");

For the purpose and subject to the terms and conditions hereinafter set forth, the County and the Provider hereby agree as follows:

- 1. Services.** Provider shall provide the County comprehensive employee benefits consulting services for the County's group insurance benefits, flexible spending accounts, short-term and long-term disability, wellness incentives, as well as other employee benefits which may be added from time to time.
- 2. Term.** The services of the Provider shall begin on January 1, 2019, and, unless sooner terminated by mutual consent or as hereinafter provided, shall be provided until December 31, 2020; provided that the County shall have the right to terminate this Agreement, without cause, upon 30 days' notice in writing to the other party, or upon 7 days written notice if the Provider breaches the Agreement.
- 3. Compensation.** As full compensation for the Provider's services, the County has compensated the Provider the sum of \$65,000 per calendar year, totaling \$130,000 for the two-year period. The Provider shall not be entitled to any additional compensation for any expenses and costs, including direct labor, indirect costs, and profit. The Provider shall remit to the County any fees or remuneration received directly or indirectly by the Provider from any source, including insurance or benefits providers, as a result of acting as the employee benefits consultant for the County ("Third Party Remuneration").

No later than December 31, 2020, the Provider shall provide the County with a copy of each Schedule A of Form 5500 from every Third Party Benefit Provider from which the Provider received Third Party Remuneration relating to its service to the County for each year from 2014-2020. The Provider shall reimburse the County for the amounts by which Third Party Remuneration exceeded the contractual amount the County owed the Provider for each year from 2014 through 2020. Notwithstanding anything to the contrary herein, the parties acknowledge that the Provider has paid the County \$192,899.68, which represents the amount that the Provider claims Third Party Remuneration exceeded the contractual amounts owed the Provider, and the Provider shall remit to the County any additional Third Party Remuneration owing to the County for the period of service to the County up to and including December 31, 2020. The parties agree that the County has paid the Provider in full and does not owe the Provider any additional compensation pursuant to this Agreement.

**4. Independent Contractor.** The Provider shall operate as an independent contractor, and the County shall not be responsible for any of the Provider's acts or omissions. The Provider, its employees, and subcontractors shall not be treated as an employee with respect to the services performed hereunder for federal or state tax, unemployment or workers' compensation purposes. Neither federal, state, nor payroll tax of any kind shall be withheld or paid by the County on behalf of the Provider or the employees of the Provider. The Provider is fully responsible for the payment of any and all taxes arising from the payment of monies under this Agreement. The Provider shall comply with the North Carolina Workers' Compensation Act and shall ensure that its subcontractors also comply. The Provider shall not be treated as an employee with respect to the services performed hereunder for purposes of eligibility for, or participation in, any employee pension, health, or other fringe benefit plan of the County. The Provider has no authority to enter into contracts or agreements on behalf of the County. The County shall not be liable to the Provider for any expenses paid or incurred by the Provider unless otherwise agreed in writing. The Provider shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide contracted services unless otherwise agreed in writing.

**5. Indemnification.** The Provider agrees to indemnify, defend, and hold the County harmless from and against any and all claims, expenses (including attorney fees), costs or liability for acts or omissions of the Provider relating to this Agreement or services provided pursuant to it.

**6. Insurance.** The Provider shall maintain, at its sole expense, insurance coverage as required by the Forsyth County Risk Manager.

**7. County Property.** Provider agrees that it shall be responsible for the proper custody and care of any property furnished to it by the County for use in connection with the performance of this contract and will reimburse the County for loss of, or damage to, such property. Any information, data, documents, studies, or reports given to or prepared or assembled by the Provider under this Agreement shall be kept confidential and not divulged or made available to any individual or organization without prior written approval of the County.

**8. Notice.** All notices permitted or required to be given by one party to the other party shall be addressed and delivered in writing as follows:

For the County:  
Paul L. Fulton, Jr., CFO  
Forsyth County Finance Department  
201 N Chestnut Street, Winston-Salem, NC 27101  
[fultonpl@forsyth.cc](mailto:fultonpl@forsyth.cc)

For the Provider:  
Mark Browder, Vice President  
211 Greenwich Road,  
Charlotte, NC 28211  
[mark@markiiieb.com](mailto:mark@markiiieb.com)

- 9. Assignment.** The Provider may not assign its obligations under this Agreement unless it has received prior written approval from the County, which may be withheld at the sole discretion of the County.
- 10. Waiver.** No action or failure to act by the County shall constitute a waiver of any of its rights or remedies or as approval or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
- 11. Governing Law.** This Agreement shall be governed by North Carolina law, except that provisions regarding conflicts of laws shall not apply. The venue for any legal proceeding shall be in Forsyth County, North Carolina.
- 12. Nonappropriation.** Notwithstanding anything to the contrary herein, in the event that public funds are unavailable and not appropriated for the performance of the County's obligations under this Agreement, then this Agreement shall automatically expire without penalty to the County 30 days after written notice of the unavailability and non-appropriation of public funds. In the event of a change in the County's statutory authority, mandate, or mandated functions by state or federal legislative or regulatory actions, which adversely affects the County's authority or duty to continue its obligations under this Agreement, then this Agreement shall automatically terminate without penalty to the County 30 days after written notice of such limitation or change in the County's legal authority or duty.
- 13. Survival of Provisions.** All obligations arising prior to termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the parties shall survive the completion of services and termination of this Agreement.
- 14. Modification.** This Agreement may only be modified in writing and signed by both the Provider and by the County Manager or other authorized County official.
- 15. Conflict with Attachments.** In the event of any conflict between the provisions in this Agreement and any provisions in an attachment thereto, the provisions in this Agreement shall take precedence over any provision in an Attachment.
- 16. Miscellaneous.** The Provider shall comply with all applicable laws and regulations including but not limited to federal, state and local laws regarding business permits, certificates, and licenses that may be required to carry out the services to be performed under this Agreement and all federal immigration laws in its hiring and contracting practices. Provider and its subcontractors shall comply with Article 2 of Chapter 64 of the North Carolina General Statutes relating to the required use of the federal E-Verify program to verify the work authorization of newly hired employees. Failure of the

Provider to comply with this provision or failure of its subcontractors to comply could render this contract void under North Carolina law. Provider hereby certifies that it is not on the North Carolina State Treasurer's lists of persons engaging in business activities in Sudan (Darfur), Iran, or boycotting Israel, prepared pursuant to NCGS §§ 147-86.43, 147-86.58, and 147-86.81, nor will Provider utilize for this Agreement any subcontractor on such lists. This agreement is intended for the benefit of the County and the Provider and not for any other party. If any provision of this Agreement shall be unenforceable, the remainder of the Agreement shall be enforceable to the extent allowed by law.

IN WITNESS WHEREOF, the authorized officials of the County and the Provider have set their hands and seals as of the day and year first above written.

FORSYTH COUNTY, NORTH CAROLINA

(SEAL)

By: \_\_\_\_\_  
J. Dudley Watts, Jr, County Manager

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

ATTEST:

\_\_\_\_\_  
Ashleigh M. Sloop, Clerk to the Board

Date:

PROVIDER

(SEAL)

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

Printed Name: \_\_\_\_\_

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

**RESOLUTION AWARDING AND AUTHORIZING EXECUTION OF A CONTRACT  
BETWEEN FORSYTH COUNTY AND MARK III BROKERAGE, INC., FOR  
COMPREHENSIVE EMPLOYEE BENEFITS CONSULTING SERVICES FOR  
INSURANCE, FLEXIBLE SPENDING ACCOUNTS, SHORT- AND LONG-TERM  
DISABILITY, AND WELLNESS INITIATIVES**

**WHEREAS** Forsyth County staff prepared a request for proposals (RFP) and solicited proposals from thirty-six benefits consulting firms;

**WHEREAS** five firms responded by submitting proposals and the firm with the lowest proposed cost also meeting the specifications and providing the most comprehensive services of the RFP is Mark III Brokerage, Inc. (Mark III);

**WHEREAS** Mark III will provide such services for a fee of \$35,000 per year; and

**WHEREAS** it is recommended that a contract for comprehensive employee benefits consulting services be awarded to Mark III and that all other proposals be rejected;

**NOW, THEREFORE, BE IT RESOLVED**, that the Forsyth County Board of Commissioners hereby awards a contract to Mark III Brokerage, Inc., for comprehensive employee benefits consulting services for insurance, flexible spending accounts, short- and long-term disability, and wellness initiative, for a term of three years from January 1, 2021, until December 31, 2023, with an optional two-year annual renewal during calendar years 2024 and 2025, and rejects all other proposals; and

**BE IT FURTHER RESOLVED**, by the Forsyth County Board of Commissioners that the County Manager and Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, an agreement, amendments to the agreement and additional agreements with Mark III Brokerage, Inc., for these services, within budgeted appropriations, in the current and future fiscal years, for a maximum of three years duration, with agreements terminating no later than December 31, 2023, if these services are deemed necessary, subject to pre-audit certificate thereon by the County Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney.

Adopted this the 17<sup>th</sup> day of December 2020.

**STATE OF NORTH CAROLINA**

**FORSYTH COUNTY**

**AGREEMENT**

THIS AGREEMENT, made and effective this 1st day of January 2021, by and between Forsyth County, North Carolina (the "County"), and Mark III Brokerage, Inc. (the "Provider");

For the purpose and subject to the terms and conditions hereinafter set forth, the County and the Provider hereby agree as follows:

**1. Services.** The Provider shall provide comprehensive employee benefits consulting services for Forsyth County's group insurance benefits, flexible spending accounts, short-term and long-term disability and wellness initiatives, as well as other employee benefits which may be added from time to time. Services outlined in the Mark III Brokerage, Inc., response to "Forsyth County's Request for Proposals" dated November 12, 2020, attached hereto as Exhibit A, and any mutually agreed upon addenda are incorporated herein by reference.

**2. Term.** The services of the Provider shall begin on January 1, 2021 and, unless sooner terminated by mutual consent or as hereinafter provided, shall be provided until December 31, 2023. Forsyth County reserves the right, at its sole option, to renew the contract up to a maximum of two (2) additional one-year terms extending through December 31, 2025. The County shall have the right to terminate this Agreement, without cause, upon 30 days notice in writing to the other party, or upon 7 days written notice if the Provider breaches the Agreement.

**3. Compensation.** The Provider shall invoice the County quarterly for services rendered during the preceding 90 days. The County shall pay all such bills within the following 15 days provided all elements of the Agreement are satisfactorily met. Total payments under this contract are not to exceed \$35,000 annually.

The Provider shall not retain any commissions, fees, remuneration, or other payment from Third Party Benefits Providers or from any other party, which were received as a result of acting as the employee benefits consultant for the County ("Third Party Remuneration"), and shall remit to the County any Third Party Remunerations within 15 days of receiving them. Provider will provide the County with a copy of each Schedule A of Form 5500 from every Third Party Benefit Provider by December 31 of each calendar year.

**4. Independent Contractor.** The Provider shall operate as an independent contractor, and the County shall not be responsible for any of the Provider's acts or omissions. The Provider, its employees, and subcontractors shall not be treated as an employee with respect to the services performed hereunder for federal or state tax, unemployment or workers compensation purposes. Neither federal, state, nor payroll tax of any kind shall



be withheld or paid by the County on behalf of the Provider or the employees of the Provider. The Provider is fully responsible for the payment of any and all taxes arising from the payment of monies under this Agreement. The Provider shall comply with the North Carolina Workers Compensation Act and shall ensure that its subcontractors also comply. The Provider shall not be treated as an employee with respect to the services performed hereunder for purposes of eligibility for, or participation in, any employee pension, health, or other fringe benefit plan of the County. The Provider has no authority to enter into contracts or agreements on behalf of the County. The County shall not be liable to the Provider for any expenses paid or incurred by the Provider unless otherwise agreed in writing. The Provider shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide contracted services unless otherwise agreed in writing.

**5. Indemnification.** The Provider agrees to indemnify, defend, and hold the County harmless from and against any and all claims, expenses (including attorney fees), costs or liability for acts or omissions of the Provider relating to this Agreement or services provided pursuant to it.

**6. Insurance.** The Provider shall maintain, at its sole expense, insurance coverage as required by the Forsyth County Risk Manager.

**7. County Property.** Provider agrees that it shall be responsible for the proper custody and care of any property furnished to it by the County for use in connection with the performance of this contract and will reimburse the County for loss of, or damage to, such property. Any information, data, documents, studies, or reports given to or prepared or assembled by the Provider under this Agreement shall be kept confidential and not divulged or made available to any individual or organization without prior written approval of the County.

**8. Notice.** All notices permitted or required to be given by one party to the other party shall be addressed and delivered in writing as follows:

**For the County:**

Shannon Hutchins, Human Resources Director  
201 North Chestnut Street  
Winston-Salem, NC 27101  
[hutchiss@forsyth.cc](mailto:hutchiss@forsyth.cc)

**For the Provider:**

Mark Browder, Vice President  
211 Greenwich Road  
Charlotte, NC 28211  
[mark@markiiieb.com](mailto:mark@markiiieb.com)

- 9. Assignment.** The Provider may not assign its obligations under this Agreement unless it has received prior written approval from the County, which may be withheld at the sole discretion of the County.
- 10. Waiver.** No action or failure to act by the County shall constitute a waiver of any of its rights or remedies or as approval or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
- 11. Governing Law.** This Agreement shall be governed by North Carolina law, except that provisions regarding conflicts of laws shall not apply. The venue for any legal proceeding shall be in Forsyth County, North Carolina.
- 12. Nonappropriation.** Notwithstanding anything to the contrary herein, in the event that public funds are unavailable and not appropriated for the performance of the County's obligations under this Agreement, then this Agreement shall automatically expire without penalty to the County 30 days after written notice of the unavailability and non-appropriation of public funds. In the event of a change in the County's statutory authority, mandate, or mandated functions by state or federal legislative or regulatory actions, which adversely affects the County's authority or duty to continue its obligations under this Agreement, then this Agreement shall automatically terminate without penalty to the County 30 days after written notice of such limitation or change in the County's legal authority or duty.
- 13. Survival of Provisions.** All obligations arising prior to termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the parties shall survive the completion of services and termination of this Agreement.
- 14. Modification.** This Agreement may only be modified in writing and signed by both the Provider and by the County Manager or other authorized County official.
- 15. Conflict with Attachments.** In the event of any conflict between the provisions in this Agreement and any provisions in an attachment thereto, the provisions in this Agreement shall take precedence over any provision in an Attachment.
- 16. Miscellaneous.** The Provider shall comply with all applicable laws and regulations including but not limited to federal, state and local laws regarding business permits, certificates, and licenses that may be required to carry out the services to be performed under this Agreement and all federal immigration laws in its hiring and contracting practices. Provider and its subcontractors shall comply with Article 2 of Chapter 64 of the North Carolina General Statutes relating to the required use of the federal E-Verify program to verify the work authorization of newly hired employees. Failure of the Provider to comply with this provision or failure of its subcontractors to comply could render this contract void under North Carolina law. Provider hereby certifies that it is not on the North Carolina State Treasurer's lists of persons engaging in business activities in Sudan (Darfur), Iran, or boycotting Israel, prepared pursuant to NCGS §§ 147-86.43,

147-86.58, and 147-86.81, nor will Grantee utilize for this Agreement any subcontractor on such lists. This agreement is intended for the benefit of the County and the Provider and not for any other party. If any provision of this Agreement shall be unenforceable, the remainder of the Agreement shall be enforceable to the extent allowed by law.

IN WITNESS WHEREOF, the authorized officials of the County and the Provider have set their hands and seals as of the day and year first above written.

FORSYTH COUNTY, NORTH CAROLINA

(SEAL)

By: \_\_\_\_\_  
J. Dudley Watts, Jr, County Manager

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

ATTEST:

\_\_\_\_\_  
Ashleigh M. Sloop, Clerk to the Board

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

Provider

(SEAL)

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

Printed Name: \_\_\_\_\_

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

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