

DATE: February 6, 2025

MEMO TO: Gina Roberts, Chair
Finance Committee

FROM: Mary E. Kann
Director of Administration

RECOMMENDATION: Recommend approval of a Resolution approving a three-year contract with Segal for Health and Welfare Plan Nondiscrimination Testing, in the Contract Price of \$41,000.00.

STRATEGIC DIRECTION SUPPORTED: Organizational Sustainability

FINANCIAL DATA: The total cost of the three-year contract for testing is \$41,000.00 and is budgeted for annually in the Administration Department's Consulting Fees (19214000-701500).

BACKGROUND: As a self-insured benefit plan provider, the District is required to have Internal Revenue Code (IRC) Section 129 Dependent Care Spending Account, IRC Section 125 Cafeteria Plan, and IRC Section 105(h) Self-Insured Health Plan Nondiscrimination Testing conducted. Segal will provide services to ensure compliance with these IRC testing requirements and produce the relevant documents each year that could be made available to the Internal Revenue Service in the case of an audit. These documents will demonstrate the District's annual due diligence and compliance with the Internal Revenue Code. Segal has performed this same testing for the District since 2022, and, prior to that, when the District fell under Lake County's plan.

Segal's complete proposal, methodology outline, and deliverable summary is attached to the recommendation.

REVIEW BY OTHERS: Director of Finance, Deputy Director Human Resources and Risk, Purchasing Manager, Manager of Board Operations, Corporate Counsel.

**LAKE COUNTY FOREST PRESERVE DISTRICT
LAKE COUNTY, ILLINOIS**

**A RESOLUTION APPROVING A THREE-YEAR CONTRACT WITH SEGAL FOR
HEALTH AND WELFARE PLAN NONDISCRIMINATION TESTING SERVICES**

WHEREAS, the Lake County Forest Preserve District (the “District”) joined the Intergovernmental Personnel Benefits Cooperative (IPBC) on January 1, 2022, becoming responsible for its own benefit administration; and

WHEREAS, under the Internal Revenue Code (“IRC”) and its regulations, the District is required to conduct Health and Welfare Plan Nondiscrimination Testing, (the “Services”); and

WHEREAS, the Director of Administration and the Purchasing Manager have determined that the Services require personal confidence; and

WHEREAS, Segal has submitted a proposal for the Services, in the form attached hereto, which includes pricing (the “Proposal”); and

WHEREAS, the District’s staff, the Purchasing Manager, the Director of Administration, and the Finance Committee have reviewed the Proposal, and recommend that the Board of Commissioners (i) find that the Proposal is the proposal that is most advantageous to the District, and (ii) award a contract for the Services (the “Contract”) to Segal for a three-year term in a total amount not to exceed \$41,000.00 (the “Contract Price”); and

WHEREAS, the Board of Commissioners hereby finds that the Proposal is the proposal that is most advantageous to the District;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Lake County Forest Preserve District, Lake County, Illinois, **THAT**:

Section 1: Recitals. The recitals set forth above are incorporated as a part of this Resolution by this reference.

Section 2: Award of Contract. The Contract in the amount of the Contract Price, in substantially the form attached hereto, is hereby awarded to Segal.

Section 3: Execution of Contract. The Executive Director of the District is hereby authorized and directed to execute the Contract for the Services in substantially the form attached hereto.

Section 4: Payments. The District Treasurer shall make payments under the Contract only pursuant to, and in accordance with the Contract terms.

Section 5: Effective Date. This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this ____ day of _____, 2025

AYES:

NAYS:

APPROVED this ____ day of _____, 2025

Jessica Vealitzek, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Board Secretary
Lake County Forest Preserve District

Exhibit No. _____



Leonard Spangher
VP & Senior Consultant
T 212-251-5228
M 646-345-2998
lspangher@segalco.com

333 West 34th Street
New York, NY 10001-2402
segalco.com

SENT VIA EMAIL

January 2, 2025

Laurel C. Diver, SPHR, SHRM – SCP
Deputy Director of Human Resources & Risk
Lake County Forest Preserves
1899 West Winchester Road
Libertyville, Illinois 60048
847-968-3242

Dear Laurel:

We thank you for this opportunity to once again offer to Lake County Forest Preserves (“Forest Preserves”) Segal’s Health and Welfare Plan Nondiscrimination Testing services. We provide these nondiscrimination testing services to corporate, multiemployer and public sector clients regularly, and are very familiar with their complexities. We provide our clients with results reports that are both detailed and accurate, and can be used in defense of audits, if needed. We have a strong track record of working with complex populations and unusual program designs, which enables us to find ways for our clients to pass the various nondiscrimination tests while also ensuring that Plan Counsel is satisfied with the methods we use. Below we discuss the process we use for each line of testing, the timeline needed to complete the projects, and the proposed fees.

The Process

Based on our understanding of your benefit program’s testing needs, Forest Preserves is seeking Health and Welfare Plan nondiscrimination testing to be performed. The Health and Welfare plan testing would include Internal Revenue Code (“IRC”) Section 129 Dependent Care Spending Account, IRC Section 125 Cafeteria Plan, and IRC Section 105(h) Self-Insured Health Plan Nondiscrimination Testing. The following describes our typical steps taken in the nondiscrimination testing processes, including testing details of what benefits are tested, what tests are performed, and how often those are typically performed, as well as the process for providing our results.

Health and Welfare Plan Nondiscrimination Testing

Data Process

- Segal will provide a data request annually for the testing to be performed in that given year. Section 129 will be performed every year, and Sections 125 and 105(h) will be performed every three years (Revenue Procedure 93-42 allows for certain types of nondiscrimination testing to take place every three years, as described in the Fee section below).
- Segal will send a secure email through our current SFT (Secure File Transfer) system when Forest Preserves is ready to send the data. Forest Preserves will then respond to that secure email, and attach the data files that will be sent to Segal securely through email.
- Segal will review the data submission to ensure we have received everything we need in order to move forward with our data analysis process. After complete data is received, Segal will review the data provided in depth, and ask any data questions we may have at that time. All data questions will also be sent securely through our SFT system.
- Once Forest Preserves is able to provide clean and complete responses to all data questions, the testing can begin.
- Segal then edits the data based on any clarifying points, and manipulates it into a format usable in our testing model.

This data process is Segal's comprehensive approach to perform the nondiscrimination testing. This process has Forest Preserves provide data and clarity around that data, and then Segal performs all necessary data cleanup, testing, and results reporting, as well as providing recommendations for remedial action if any actions are deemed necessary.

Once the data is prepared for testing, we run Segal's proprietary testing models and perform the following tests:

Section 129 Nondiscrimination Testing

IRC Section 129 includes testing only the Dependent Care Spending Account (DCSA) benefit. The following subtests are required:

- Eligibility Test
 - This is both a mathematical test (IRC Section 410(b) safe harbor nondiscriminatory classification test) as well as a facts and circumstances (word) test to ensure enough of the employee population is eligible for this benefit, factoring in an IRS defined degree of equity between non-highly compensated employees (NHCEs) and highly compensated employees (HCEs)
- Contributions & Benefits Test
 - This is a facts and circumstances test based on program design and structure, ensuring contributions and benefits are provided uniformly for those who are similarly situated

- 55% Average Benefits Test
 - This is a mathematical utilization test that looks at the ratio of utilization for those HCEs and NHCEs. This is the subtest that is often difficult to pass without corrective measures, and this test must be run on an aggregate basis for the entire employee population
- 25% Concentration Test
 - This is a mathematical test based on shareholder / owner utilization within the plan. As Forest Preserves is a governmental entity, there is no ownership by individuals, and therefore this subtest is automatically passed

IRS regulations recommend this testing be performed at least annually to maintain compliance. We recommend testing this benefit program at the earliest point in the plan year because it is possible to institute a plan change that allows an otherwise failing program to pass prospectively once that change is made. A data request for IRC Section 129 Dependent Care Spending Account (DCSA) testing data will be provided separately upon acceptance of this proposal. The IRS regulations, and the Employee Benefits Institute of America (EBIA) treatise – often referred to as “the” definitive guidance for health and welfare nondiscrimination testing – both appear to allow prospective testing using snapshot data taken from the beginning (or any single point) of the plan year being tested. Thus, for calendar year 2025 testing, we would suggest testing as early in the year as possible (usually in March/April timeframe, after compensation data for 2024 can be accessed).

Section 125 Nondiscrimination Testing

IRC Section 125 covers, among other things, testing cafeteria plans, which encompasses plans with pre-tax benefits, premium conversion plans (currently this includes the medical/prescription drug (including a medical opt-out provision), dental, and vision plans), Flexible Spending Accounts (FSAs), Dependent Care Spending Accounts (DCSAs), Health Savings Account (HSA) deferrals, etc., that are specified as part of the (IRC Section 125) Cafeteria Plan in the Cafeteria Plan document (required to be created under the 2007 proposed Section 125 regulations). We note below which test components are additional requirements under the 2007 proposed Section 125 regulations, as plan sponsors are not necessarily required to follow the 2007 proposed regulation and can choose to instead follow the prior set of Section 125 regulations. We would recommend testing using the 2007 Proposed Section 125 Regulations to ensure that the benefits design and structure pass this testing in case these or similar regulations are ever made final.

- Eligibility Tests
 - This has both a mathematical test (IRC Section 410(b) safe harbor nondiscriminatory classification test) and several facts and circumstances tests (four tests), three of which are related to service and employment requirements and delayed entry into the plan
 - Additional Requirement: Benefits and Contributions Availability Test (facts and circumstances test). This test ensures that the cafeteria plan does not favor HCEs with respect to the cost of benefits provided and the contributions associated with them for those who are similarly situated

- Additional Requirement: Benefits Structure Availability (facts and circumstances test). This test ensures that the benefits structure created (type of benefits, or architecture of plan choices) is made available to HCEs and NHCEs in an unbiased way, for those who are similarly situated
 - Nondiscrimination in Operations Test (additional requirement)
- This is a facts and circumstances test that ensures that the plan operates in a manner that does not favor HCEs
 - Contributions & Benefits Tests (2nd utilization test is an additional requirement)
- This has both mathematical and facts and circumstances tests (three tests in total)
- Availability: Facts and circumstances test, which ensures all benefits are equally available to non-excludable employees who are similarly situated
- Utilization: Mathematical tests for utilization of Total Statutory Benefits, ensures the total value of the benefits package is not being used in a disproportionate manner favoring HCEs
- Utilization: Mathematical tests for utilization of Total Employer Contributions, ensures the employer's portion of the value of the benefits is not being used in a disproportionate manner favoring HCEs
 - Key Employee Concentration Test
- This is a mathematical test regarding utilization by Key Employees. Note that being a governmental entity means that, by definition, there are no Key Employees within the organization, and, therefore, this subtest is automatically passed

Any plan with a pre-tax benefit that runs through a Section 125 Cafeteria Plan would be tested under IRC Section 125. IRS regulations recommend this testing be performed annually to maintain compliance. Based on 2007 proposed clarifications and revisions to the regulations, this testing is required to be performed retrospectively, and must use historical data (includes any individual who was eligible to participate in the program at any point in time during the plan year being tested, and includes cumulative employee and employer pre-tax elections) provided as of the final day of the plan year. We would recommend testing on that basis to ensure that any future final testing regulations would be met. Thus, during calendar year 2025, we would be testing the 2024 plan year using December 31, 2024 historical data. **Given Forest Preserves has chosen to follow Revenue Procedure 93-42 and perform this testing every three years, Forest Preserve's cycle would use December 31, 2025 historical data, and this testing would not be performed until sometime in late 2026.**

Section 105(h) Nondiscrimination Testing

IRC Section 105(h) includes the testing of self-insured health benefit plans only, such as Health Flexible Spending Accounts (FSAs) and self-insured medical/Rx plans.

IRC Section 105(h) nondiscrimination testing requires a plan to pass two tests:

- Eligibility Test(s)
 - This had both mathematical (IRC Section 410(b) safe harbor nondiscriminatory classification test, as well as two percentage-eligible tests) and a facts and circumstances tests (must pass any one of the three mathematical options)
- Benefits Test
 - This is a set of facts and circumstances tests, relating to uniformity of employee contributions for those similarly situated, the maximum benefit level, the type of expenses reimbursable, and disparate waiting periods

IRS regulations recommend this testing be performed at least annually to maintain compliance. We recommend testing under this IRC Section at the time IRC Section 125 is tested, using the same data requirements. A data collection spreadsheet will be provided upon acceptance of this proposal to Forest Preserves for IRC Sections 125 and 105(h). Thus, in calendar year 2025, we would be testing the 2024 plan year using December 31, 2024 historical data. **Given Forest Preserves has chosen to follow Revenue Procedure 93-42 and perform this testing every three years, Forest Preserve's cycle would use December 31, 2025 historical data, and this testing would not be performed until sometime in late 2026.**

Extensive Review Process

Once the testing is complete, Segal ensures compliance and satisfaction with our methodologies used by employing the following steps:

- Segal Internal Technical Review
- Segal Internal Compliance Review
- Forest Preserves Plan Counsel Review of Segal Methodology (optional). We offer to provide our draft results report, and would be happy discuss our methods with Plan Counsel, or simply let Plan Counsel review the report in advance of its final completion

Deliverable: Results Report(s)

Segal produces two documents (one for IRC Section 129, and one for IRC Sections 125 and 105(h)) for your files each year that could be provided to the IRS if the Service decides to audit Forest Preserves' Benefit Programs. These documents will demonstrate Forest Preserves' annual due diligence and compliance with Internal Revenue Code (and the applicable regulations) and allow Forest Preserves' Plan Counsel to present it as supportable documentation if an audit were to occur. Each report will be a detailed account of the processes, methodology, and assumptions Segal uses in the nondiscrimination testing process as well as the results of this testing. Should Segal find that Forest Preserves is unable to pass a particular test, Segal will include recommendations as to how to make plan adjustments in order to pass that test in future testing years (or in the same testing year if IRC Section 129 is not passed). Segal will note in the report

that if the corrective action has been taken, Forest Preserves' benefit plans will pass nondiscrimination testing. Segal does not, however, provide legal advice, so Plan Counsel should be involved in any decision to ensure compliance with the IRC.

The Timeframe / Schedule

Once engaged, Segal will proceed based on the following schedule, which we are happy to discuss and modify upon request.

Health and Welfare Plan Nondiscrimination Testing Schedule

IRC Section 129 Dependent Care testing will be performed on a going forward basis (plan year 2025 will be tested in 2025). Segal will provide a data request upon acceptance of this proposal and will then schedule time to review this with you thoroughly (if desired). This should take place as early in the plan year as possible. Once we receive the data and review it to ensure we understand it, we will ask follow-up data questions to gain any additional needed clarity. Once all responses to our data questions provide us the needed clarity, Segal will then be able to proceed with the testing. It takes Segal four to six weeks from the date of being provided clean/complete data (person by person census / payroll / benefits data) to provide the testing results and the corresponding results report.

Because there are fewer inherent time constraints established by the IRS on when IRC Section 125/105(h) health and welfare testing should be performed, Segal will include the data request for Section IRC 125/105(h) at an agreed upon time (which can come as early as the Section 129 spreadsheet), upon acceptance of this proposal. We will commence the IRC Section 125/105(h) testing after the IRC Section 129 testing is completed. Generally, that would mean that results for IRC Sections 125 and 105(h) testing would not be made final and provided to Forest Preserves until later in the year, likely by early to mid-December (as is typically the case with this type of testing for most of our clients). **Given Forest Preserves has chosen to follow Revenue Procedure 93-42 and perform the Sections 125 / 105(h) testing every three years, Forest Preserve's cycle would use December 31, 2025 historical data, and this testing would not be performed until sometime in late 2026, and results would be provided in December 2026.**

The Fees

Proposed Health and Welfare Plan Nondiscrimination Testing Fees

The fees, when broken down by IRS Section of testing, would be:

- \$8,000 for IRC Section 129 (2025 Plan Year, tested prospectively in 2025 and annually)

- \$10,000 for IRC Section 125 (2025 Plan Year, tested retrospectively in 2026)
- \$7,000 for IRC Section 105(h) (2025 Plan Year, tested retrospectively in 2026)

Given Forest Preserves has chosen to follow Revenue Procedure 93-42 and perform the 125/105(h) testing every three years, Forest Preserve's cycle would use December 31, 2025 historical data, and this testing would not be performed until sometime in late 2026.

Revenue Procedure 93-42 allows for certain types of nondiscrimination testing (seemingly specific to certain retirement plans) to take place every three years rather than every year for those plans that remain consistent from year to year in all key aspects (demographics, design, administration, and program structure). Therefore, this requires that your Plan Counsel agree to using the methodology contained in this Revenue Procedure, as it is unclear in the regulations if the three-year testing rule can be applied to Health and Welfare Plans being tested. While it is clear it should not apply to IRC Section 129, given the tendency for plans to fail the 55% Average Benefits Test in any given year, if plan design, cost structure, administration of the plans, and demographics within the plans do not change significantly from year to year, this Revenue Procedure does appear to possibly be applicable for IRC Section 125 and 105(h) testing. In the past, Plan Counsel has agreed to using this Revenue Procedure, and we assume that cycle will be continued, unless you should retain new Plan Counsel. If new Plan Counsel is attained, we suggest running this methodology by them prior to agreeing to continue this process. Given the three-year cycle is expected to continue, the schedule would be;

- **\$8,000 for IRC Section 129 for nondiscrimination testing performed in 2025**
- **\$25,000 for IRC Sections 129, 125, 105(h) for nondiscrimination testing performed in 2026**
- **\$8,000 for IRC Section 129 for nondiscrimination testing performed in 2027.**

If Forest Preserves agrees with this schedule and Plan Counsel continues to agree with this approach, then this proposal should be considered a three-year arrangement given the above fee schedule.

Please let us know if you have any questions or would like to set up a time to further discuss anything in this proposal. Should you accept this proposal, we ask that you complete the Acceptance section below for each of the services desired, and the timeframe length of the agreement (as nondiscrimination testing is often performed in three-year cycles, which is what Forest Preserves had previously selected).

Sincerely,

Leonard Spangher

Leonard Spangher
VP & Senior Consultant

CC: Jarrett Felix, Segal
John Graham, Segal
Dan Levin, Segal
Lisa Simioni, Segal
Dylan Wingfield, Segal

Acceptance (Health & Welfare Nondiscrimination Testing)

Agreed to on behalf of Forest Preserves (for a _____-year agreement)

Authorized

Representative: _____

Date: _____

Consultant Disclosure Statement

Each **Consultant** (bold/italicized words are defined in Section II below) proposing to perform **Covered Services** for the Lake County Forest Preserve District (the “District”) is required, by the District’s Purchasing Policy, to complete this form and make disclosures (i) on its behalf, unless it is a **Publicly Traded Consultant**, (ii) on behalf of its **Disclosure-Covered Owners**, unless it is a **Publicly Traded Consultant**, and (iii) on behalf of its **Disclosure-Covered Employees**, even if it is a **Publicly Traded Consultant**. If **Consultant** is a **Publicly Traded Consultant**, please complete Sections I, III, and V. If **Consultant** is not a **Publicly Traded Consultant**, please complete Sections I, IV, and V.

I. Identification of Consultant and Related Parties

Consultant Name:	
Consultant Address:	
Person Certifying Statement for Consultant ; including Phone # and Email Address:	
Covered Services :	
Names of Disclosure-Covered Employees (if none, please insert “N/A”)	

II. Defined Terms

- a) **“Campaign Contribution”** is defined in Section 9-1.4 of the Illinois Election Code, 10 ILCS 5/9-1.4.
- b) **“Candidate Political Committee”** is defined in Section 9-1.8(b) of the Illinois Election Code, 10 ILCS 5/9-1.8(b).
- c) **“Consultant”** is a person or entity that submits a proposal to enter into a contract with the District, or a proposal for a change order to such a contract, that calls for the person or entity to perform Covered Services for the District.
- d) **“Covered Services”** are the **“Covered Services”** identified above by District staff, which have an expected price greater than \$30,000.00, taking into account the original contract price for the **Covered Services** plus the prices of all change orders to such original contract.
- e) **“Disclosure-Covered Owner”** is (i) a natural person who is a **Consultant** or (ii) a person or entity that, directly or indirectly (including without limitation ownership through a corporation, limited liability company, joint venture, or partnership) owns at least 7.5% of a **Consultant** that is not a **Publicly Traded Consultant**.
- f) **“Disclosure-Covered Employee”** is (i) a natural person who is a **Consultant** or (ii) a **Consultant** employee or independent contractor who will receive a direct financial benefit (including without limitation a commission, bonus, or salary increase) if the District awards the proposed contract or change order to the **Consultant**.
- g) **“Family Member”** is a person related as a parent; child; sibling; uncle or aunt; great aunt or great uncle; first cousin; nephew or niece; spouse or civil union partner; grandparent; grandchild; parent-in-law, child-in-law, sibling-in-law, or grandparent-in-law, whether that in-law relationship is created by marriage or civil union; stepparent; stepchild; stepsibling; half sibling; and fiancé or fiancée.
- h) **“Publicly Traded Consultant”** is a **Consultant** whose common stock is traded on a nationally recognized securities market.

III. Required Disclosures for Publicly Traded Consultant:

- a) **Securities Market:** Please identify the nationally recognized securities market on which **Consultant's** common stock is traded and identify the stock "ticker" symbol under which the **Consultant** is traded:

Exchange: _____; Symbol: _____.

- b) **Campaign Contribution Disclosure:** Please disclose each **Campaign Contribution** made by your **Disclosure- Covered Employees** to the following persons/entities within the two (2) years preceding the date on which the **Consultant's** proposal for **Covered Services** was submitted to the District:

- i. a Lake County Board member in his or her capacity as either a County Board member, a District Commissioner, or both; or
- ii. a **Candidate Political Committee** of a Lake County Board member.

Donor/ Disclosure-Covered Employee	Recipient of Donation	Donation Type (e.g., cash, in-kind service,)	Amount of Donation	Date of Donation

- c) **Familial Relationship Disclosure:** Please disclose each **Family Member** of your **Disclosure-Covered Employees** who is either a District Commissioner or employed by the District as an Executive Director, Chief Operations Officer, Department Director, or Manager.

Name of Family Member	Family Member's Position with District	Name of Disclosure-Covered Employee Related to Family Member	Relationship of Disclosure- Covered Employee to Family Member

IV. Required Disclosures for Consultants that are Not Publicly Traded Consultants:

- a) **Campaign Contribution Disclosure:** Please disclose each **Campaign Contribution** made by your **Disclosure- Covered Owners** or **Disclosure-Covered Employees** to the following persons/entities within the two (2) years preceding the date on which the **Consultant's** proposal for **Covered Services** was submitted:
- i. a Lake County Board member in his or her capacity as either a County Board member, a District Commissioner, or both; or
 - ii. a **Candidate Political Committee** of a Lake County Board member.

Donor/ Disclosure-Covered Owner or Disclosure-Covered Employee	Recipient	Description (cash, item, in-kind service, etc.)	Amount/ Value	Date Made

- b) **Familial Relationship Disclosure:** Please disclose each **Family Member** of a **Disclosure-Covered Owner** or **Disclosure-Covered Employee** who is either a District Commissioner or employed by the District as an Executive Director, Chief Operations Officer, Department Director, or Manager.

Name of Family Member	Family Member's Position with District	Name of Disclosure-Covered Owner or Disclosure-Covered Employee Related to Family Member	Relationship of Disclosure-Covered Owner or Disclosure-Covered Employee to Family Member

V. Consultant Certification and Signature:

By signing below, I certify that (i) I am authorized to make the disclosures above on behalf of **Consultant, Consultant's Disclosure-Covered Owners**, and **Consultant's Disclosure-Covered Employees**, (ii) I have read and understand this Consultant Disclosure Statement, (iii) the above disclosures are accurate and complete, to the best of my knowledge after making reasonable inquiry, and (iv) my signature below, if electronic, is intended to authenticate this writing and to have the same force and effect as a manual signature.

_____ Name

_____ Date