

PERSONAL SERVICES AGREEMENT

THIS PERSONAL SERVICES AGREEMENT ("Agreement") is entered into between the CITY OF OREGON CITY ("City") and BROWN & BROWN NORTHWEST ("Consultant"), for Insurance Agent of Record Services.

RECITALS

A. City requires services that Consultant is capable of providing under the terms and conditions hereinafter described.

B. Consultant is able and prepared to provide such services as City requires under the terms and conditions hereinafter described.

The parties agree as follows:

AGREEMENT

1. Term. The term of this Agreement, unless sooner terminated pursuant to provisions set forth below, shall be from April 1, 2016 to March 31, 2017. In addition, the City shall have an option to extend the services for an additional two years at the City's sole discretion. Any termination of this Agreement shall not extinguish or prejudice City's right to enforce this Agreement with respect to (i) breach of any warranty; or (ii) any default or defect in Consultant's performance that has not been cured.

2. Compensation. Total compensation shall not exceed \$ 27,553. Consultant shall invoice the City for the cost of the Agent of Record fees. As per the Proposal for Services provided by Consultant, \$13,375 of the proposed fee will be billed at the inception of the contract for the term April 1, 2016 to March 31, 2017. Should the City, in its sole discretion, find Consultant has satisfactorily performed its obligations under this Agreement, the City shall pay the remaining \$14,171 to the Consultant at the end of the contract year, i.e., March 31, 2017. An Agent of Record will not be compensated twice for the same policy year, April 1, 2016 to June 30, 2016.

3. Responsibilities of Agent of Record. Consultant's services under this Agreement shall consist of services as detailed in Attachment A, attached hereto and by this reference incorporated herein.

4. Standard Conditions. This Agreement shall include all of the standard conditions as detailed in Attachment B, attached hereto and by this reference incorporated herein.

5. Integration. This Agreement, along with the description of services to be performed attached as Attachment A (Request for Proposal Submittal) and the Standard Conditions to Oregon City Personal Services Agreement attached as Attachment B, contain the entire agreement between and among the parties, integrate all the terms and conditions mentioned herein or incidental hereto, and supersede all prior written or oral discussions or agreements between the parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

6. Notices. Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, postage prepaid, or personally delivered to the addresses below. All notices shall be in writing and shall be effective when

delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

To the City:

City of Oregon City
PO Box 3040
625 Center Street
Oregon City, OR 97045
Attention: City Manager c/o Katie Durfee

To Consultant:

Brown & Brown Northwest
c/o Mr. Ron Cutter
2701 NW Vaughn Street, Suite 340
Portland, Oregon 97210

Consultant shall be responsible for providing the City with a current address. Either party may change the address set forth above for purposes of notices under this Agreement by providing notice to the other party in the manner set forth above.

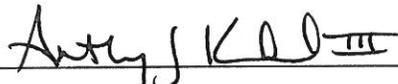
7. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on this 15th day of April, 2016.

CONSULTANT

CITY OF OREGON CITY

By: 

By: 

Title: President

Title: Anthony J. Konkol III, City Manager

Dated: 4/12/16

Dated: 4.15.16

ATTACHMENT A

RESPONSIBILITIES OF AGENT OF RECORD

- I. RISK ANALYSIS
 - A. Develop a risk management plan setting forth long-term goals and including provisions for:
 1. Levels and types of self-insurance reserves.
 2. Definitions as to which risks to self-insure, non-insure, or commercially insure, including dollar limits and risk retentions.
 3. Assistance with:
 - Safety services and inspections
 - Fire prevention
 - Loss adjustment
 - Claims administration
 - Cost trending of established property values
 - Insurance rate analysis
 4. Establishing and maintaining effective lines of communication with the City.
 5. Periodic review of relevant City policies and administrative regulations, and proposal of relevant recommendations.
 - B. Prepare annual reports to the City providing a complete insurance schedule, annual and cumulative loss histories, and an insurance budget and history of the entire risk management program along with an analysis of results and recommendations for future courses of actions.
 - C. Review and evaluate all exposures to risk, including preparation of a detailed analysis based on periodic visits and inspections of all City property; this would include property and casualty type examinations of all structures, vehicles and premises to determine areas of risk.
 - D. Provide replacement valuation for facilities, building, and equipment based upon original costs or professional appraisals.
 - E. Based on the above evaluation, review the entire insurance program and make recommendations.
 - F. Assist in the implementation of the risk elimination and transfer alternatives approved by the City. This includes, but is not limited to, assistance in implementing a driver safety program, including safety meetings, accident review boards, defensive driving programs, advice and consultation of OSHA regulations, and general liability loss control.
 - G. Respond to audit finding, offering recommendations for either compliance or alternatives.

II. INSURANCE ADMINISTRATION

- A. Implement the annual Risk Management Plan, as mutually developed by the Agent of Record and the City.
- B. Establish operating standards and response regimes.
- C. Establish procedures for creating and issuing certificates of insurance.
- D. Issue binders and auto identification cards.
- E. Maintain Fleet Schedule.
- F. Monitor progress of policy issuance and delivery.
- G. Design insuring agreements and place insurance at the most reasonable cost consistent with the sound indemnity of the insurer. The appropriate market may be selected from stock or mutual companies, reciprocals, state funds, Lloyd's, or foreign insurers.
- H. Provide or arrange for services essential to a sound program of self-insurance if, after evaluation, that is the preferable way to handle certain risks. These services would include self-insurance premium assessments, loss adjusting facilities, retention of legal services, accumulation of statistical exhibits to establish optimum self-insurance premium levels, and the development of an operational handbook for administering these funds.
- I. Develop and maintain:
 - 1. A claims procedure manual to guide the insured, the broker, and the insurer in case of loss.
 - 2. An operational reference handbook for City administrators, to include general information on what is covered, what is not covered, and what to do if questions arise.
 - 3. Risk management manuals and disaster plans.
 - 4. MyWave (or comparable) Intranet.
- J. Supervise and act as advocate on all claims, losses, disputes, issues and problems, including expediting settlements of first party losses covered by insurance; review procedures, reserves, and settlements of third party claims; and maintain records of all City claims.
- K. Receive, process, monitor and track claims.
- L. Conduct comprehensive program and claims analysis for the City for the purpose of disclosing potential problem areas.
- M. Assist in all areas of accounting for risk management costs, including:
 - 1. Allocating cost by operational divisions.

2. Checking and reviewing all rates and audits.
3. Assisting in the determination of entries for prepaid insurance or cost accrual.

- N. Annually review the working of all contracts relative to risk management, including insurance policies, service agreements, and "Hold Harmless" clauses in leases or other contracts; this would include the custom design of insurance policies when appropriate.

III. FINANCIAL ANALYSIS

- A. Provide budget planning estimates for insurance premiums and self-insurance fund administration.
- B. Monitor all premiums, billing the City for the insurance carrier, and make adjustments as necessary.
- C. Provide cost-benefit analysis for any changes in insurance coverage or reallocation of risk management funds.
- D. Produce periodic reports on status of claims.

IV. GENERAL RISK MANAGEMENT SERVICES

- A. Keep the City advised in writing of any changes in policy, and secure City approval before implementing any change.
- B. Advise the City of the various bids for insurance coverage, and offer recommendations.
- C. Respond in a timely manner to requests and questions by the City.
- D. Establish communication procedures for the City relating to contacting insurance company attorneys and/or the City's attorney in cases of potential or actual suit. These procedures would include notification of who is to represent us and guidelines for action in the event of critical timelines that could not be met by insurance company attorneys.
- E. Maintain communications and work cooperatively with the City's consultant(s), if so authorized by the City's Director of Human Resources.
- F. Advise the City of developments in the insurance market; rate, value, and other cost trends; indications of any problems emerging in the account; and other facts which might affect the City's risk management program.
- G. Provide training to staff in loss control, workplace and playground safety, violence in the workplace, ADA and confined spaces.

V. OTHER GENERAL SERVICES

- A. Meeting with staff to explain insurance procedures and coverage.

- B. Attendance at City meetings when requested, to present annual insurance budgets or proposed insurance changes when such changes are significant.
- C. Review of legislative activities, and advice to City personnel concerning the effects of legislative changes on insurance coverage and costs.
- D. Advising the City of other services available from agencies or insurance companies.

ATTACHMENT B:

STANDARD CONDITIONS TO OREGON CITY AGREEMENT

1. Payment.

(a) Invoices submitted in connection with this Agreement shall be properly documented and shall identify the pertinent agreement and/or purchase order numbers.

(b) City agrees to pay Consultant within thirty (30) days after receipt of Consultant's itemized statement. Amounts disputed by City shall be made known to Consultant within thirty (30) days after receipt of such invoice and the City shall pay to Consultant the undisputed portion of the invoice and disputed amounts may be withheld pending settlement. If the City fails to pay any invoiced amounts within 30 days, interest will accrue on each unpaid amount at the rate of one and one-half percent (1 ½%) per month, or the maximum amount allowed by law if less, from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item, which is finally resolved in the City's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

(c) City certifies that sufficient funds are available and authorized for expenditure to finance the cost of the services to be provided pursuant to this Agreement.

(d) City shall not pay any amount in excess of the compensation amounts set forth above, nor shall City pay Consultant any fees or costs that City reasonably disputes.

2. Independent Contractor Status. Consultant shall be free from direction and control over the means and manner of providing labor or services, subject only to the specifications of the desired results. Consultant is responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law. Consultant shall furnish the tools or equipment necessary for the contracted labor or services. Consultant agrees and certifies that:

(a) Consultant is engaged as an independent contractor and will be responsible for any federal or state taxes applicable to any payments made under this Agreement.

(b) Consultant is not eligible for any federal social security or unemployment insurance payments. Consultant is not eligible for any PERS or workers' compensation benefits from compensation or payments made to Consultant under this Agreement.

(c) Consultant has filed federal and state income tax returns in the name of the business as part of the personal income tax return for the previous year for labor or services performed as an independent contractor in the previous year.

(d) Consultant agrees and certifies that it is licensed to do business in the state of Oregon and that, if Consultant is a corporation, it is in good standing within the state of Oregon. Addition requirement of obtaining City of Oregon City Business License.

3. Early Termination.

(a) This Agreement may be terminated without cause prior to the expiration of the agreed-upon term by mutual written consent of the parties or by the City upon ten (10) days' written notice to the other, delivered by certified mail or in person.

(b) Upon receipt of notice of early termination, Consultant shall immediately cease work and submit a final statement of services for all services performed and expenses incurred, including but not limited to cancellation or demobilization costs or fees that Consultant incurs as a result of the termination (unless such fees or costs could be avoided by Consultant), since the date of the last statement of services.

(c) Any early termination of this Agreement shall be without prejudice to any obligation or liabilities of either party already accrued prior to such termination.

(d) The rights and remedies of City provided in this Agreement and relating to defaults by Consultant shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

4. No Third-Party Beneficiaries. City and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

5. Payment of Laborers; Payment of Taxes.

(a) Consultant shall:

(i) Make payment promptly, as due, to all persons supplying to Consultant labor and materials for the prosecution of the services to be provided pursuant to this Agreement.

(ii) Pay all contributions or amounts due to the State Accident Insurance Fund incurred in the performance of this Agreement.

(iii) Not permit any lien or claim to be filed or prosecuted against City on account of any labor or materials furnished.

(iv) Be responsible for all federal, state, and local taxes applicable to any compensation or payments paid to Consultant under this Agreement and, unless Consultant is subject to back-up withholding, City will not withhold from such compensation or payments any amount(s) to cover Consultant's federal or state tax obligation.

(v) Pay all employees at least time and one-half for all overtime worked in excess of forty (40) hours in any one week, except for individuals excluded under ORS 653.100 to 653.261 or under 29 U.S.C. §§ 201 to 209 from receiving overtime.

(b) If Consultant fails, neglects or refuses to make prompt payment of any claim for labor or services furnished by any person in connection with this Agreement as such claim becomes due, City may pay such claim to the person furnishing the labor or services and

shall charge the amount of the payment against funds due or to become due Consultant by reason of this Agreement.

(c) The payment of a claim in this manner shall not relieve Consultant or Consultant's surety from obligation with respect to any unpaid claims.

(d) Consultant and subcontractors, if any, are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires provision of workers' compensation coverage for all workers.

6. Subconsultants and Assignment. Consultant shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Consultant.

7. Access to Records. City shall have access to all books, documents, papers and records of Consultant that are pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcripts.

8. Ownership of Work Product; License. All work products of Consultant that result from this Agreement (the "Work Products") shall become the exclusive property of City, provided, however, that Consultant shall have the unrestricted right to their use. In addition, if any of the Work Products contain intellectual property of Consultant that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, Consultant hereby grants City a perpetual, royalty-free, fully paid, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use and re-use, in whole or in part (and to authorize others to do so), all such Work Products and any other information, designs, plans, or works provided or delivered to City or produced by Consultant under this Agreement. The parties expressly agree that all works produced (including, but not limited to, any taped or recorded items) pursuant to this Agreement are works specially commissioned by City, and that any and all such works shall be works made for hire in which all rights and copyrights belong exclusively to City. Consultant shall not publish, republish, display or otherwise use any work or Work Products resulting from this Agreement without the prior written agreement of City. The documents prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on extensions of the project or on any other project. Any reuse by the City without prior written verification or adaptation by Consultant for the specific purpose intended will be at City's sole risk and without liability or legal exposure to Consultant.

9. Compliance With Applicable Law. Consultant shall comply with all federal, state, and local laws and ordinances applicable to the services to be performed pursuant to this Agreement, including, without limitation, the provisions of ORS 279B.220, 279C.515, 279B.235, 279B.320 and 279B.270. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans With Disabilities Act of 1990 (Pub. L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation and other applicable statutes, rules and regulations.

10. Professional Standards. Consultant shall be responsible, to the level of competency presently maintained by others practicing in the same type of services in City's community,

for the professional and technical soundness, accuracy and adequacy of all services and materials furnished under this authorization.

11. Modification, Supplements or Amendments. No modification, change, supplement or amendment of the provisions of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

12. Indemnity and Insurance.

(a) Indemnity. Consultant acknowledges responsibility for liability arising out of Consultant's negligent performance of this Agreement and shall hold City, its officers, agents, consultants, and employees harmless from, and indemnify them for, any and all liability, settlements, loss, costs, and expenses, including attorney fees, in connection with any action, suit, or claim caused or alleged to be caused by the negligent acts, omissions, activities or services by Consultant, or the agents, consultants or employees of Consultant provided pursuant to this Agreement.

(b) Workers' Compensation Coverage. Consultant certifies that Consultant has qualified for workers' compensation as required by the state of Oregon. Consultant shall provide the Owner, within ten (10) days after execution of this Agreement, a certificate of insurance evidencing coverage of all subject workers under Oregon's workers' compensation statutes. The insurance certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to City. All agents or consultants of Consultant shall maintain such insurance.

(c) Comprehensive, General, and Automobile Insurance. Consultant shall maintain comprehensive general and automobile liability insurance for protection of Consultant and City and for their directors, officers, agents, and employees, insuring against liability for damages because of personal injury, bodily injury, death, and broad-form property damage, including loss of use, and occurring as a result of, or in any way related to, Consultant's operation, each in an amount not less than \$1,000,000 combined, single-limit, per-occurrence/annual aggregate. Such insurance shall name City as an additional insured, with the stipulation that this insurance, as to the interest of City, shall not be invalidated by any act or neglect or breach of this Agreement by Consultant.

(d) Errors and Omissions Insurance. Consultant shall provide City with evidence of professional errors and omissions liability insurance for the protection of Consultant and its employees, insuring against bodily injury and property damage arising out of Consultant's negligent acts, omissions, activities or services in an amount not less than \$500,000 combined, single limit. Consultant shall maintain in force such coverage for not less than three (3) years following completion of the project. Such insurance shall include contractual liability.

Within ten (10) days after the execution of this Agreement, Consultant shall furnish City a certificate evidencing the dates, amounts, and types of insurance that have been procured pursuant to this Agreement. Consultant will provide for not less than thirty (30) days' written notice to City before the policies may be revised, canceled, or allowed to expire. Consultant shall not alter the terms of any policy without prior written authorization from City. The provisions of this subsection apply fully to Consultant and its consultants and agents.

13. Integration. This Agreement contains the entire agreement between and among the parties, integrates all the terms and conditions mentioned herein or incidental hereto, and

supersedes all prior written or oral discussions or agreements between the parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

14. Legal Expenses. In the event legal action is brought by City or Consultant against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorney fees, costs, and expenses as may be set by a court. "Legal action" shall include matters subject to arbitration and appeals.

15. Severability. The parties agree that, if any term or provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected.

16. Number and Gender. In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall be deemed to include the others or other whenever the context so requires.

17. Captions and Headings. The captions and headings of this Agreement are for convenience only and shall not be construed or referred to in resolving questions of interpretation or construction.

18. Hierarchy. The conditions contained in this document are applicable to every Personal Services Agreement entered into by the City of Oregon City in the absence of contrary provisions. Should contrary provisions be included in a Personal Services Agreement, those contrary provisions shall control over these conditions.

19. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays and legal holidays in the state of Oregon, except that, if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day that is not a Saturday, Sunday or legal holiday.

20. Notices. Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, postage prepaid, or personally delivered to the addresses below. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

21. Nonwaiver. The failure of City to insist upon or enforce strict performance by Consultant of any of the terms of this Agreement or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights of any future occasion.

22. Information and Reports. Consultant shall, at such time and in such form as City may require, furnish such periodic reports concerning the status of the project, such statements, certificates, approvals, and copies of proposed and executed plans and claims, and other information relative to the project as may be requested by City. Consultant shall furnish City, upon request, with copies of all documents and other materials prepared or developed in relation with or as a part of the project. Working papers prepared in conjunction with the project are the property of City, but shall remain with Consultant. Copies as requested shall be provided free of cost to City.

23. City's Responsibilities. City shall furnish Consultant with all available necessary information, data, and materials pertinent to the execution of this Agreement. City shall cooperate with Consultant in carrying out the work herein and shall provide adequate staff for liaison with Consultant.

24. Arbitration.

(a) Any dispute arising out of or under this Agreement shall be determined by binding arbitration.

(b) The party desiring such arbitration shall give written notice to that effect to the other party and shall in such notice appoint a disinterested person of recognized competence in the field as arbitrator on its behalf. Within fifteen (15) days thereafter, the other party may, by written notice to the original party, appoint a second disinterested person of recognized competence as arbitrator on its behalf. The arbitrators thus appointed shall appoint a third disinterested person of recognized competence, and the three arbitrators shall, as promptly as possible, determine such matter, provided, however, that:

(i) If the second arbitrator is not appointed as described above, then the first arbitrator shall proceed to determine such matter; and

(ii) If the two arbitrators appointed by the parties are unable to agree, within fifteen (15) days after the second arbitrator is appointed, on the appointment of a third arbitrator, they shall give written notice of such failure to agree to the parties and, if the parties fail to agree on the selection of the third arbitrator within fifteen (15) days after the arbitrators appointed by the parties give notice, then, within ten (10) days thereafter, either of the parties, on written notice to the other party, may request such appointment by the presiding judge of the Clackamas County Circuit Court.

(c) Each party shall each be entitled to present evidence and argument to the arbitrators. The determination of the majority of the arbitrators or the sole arbitrator, as the case may be, shall be conclusive on the parties, and judgment on the same may be entered in any court having jurisdiction over the parties. The arbitrators or the sole arbitrator, as the case may be, shall give written notice to the parties, stating the arbitration determination, and shall furnish to each party a signed copy of such determination. Arbitration proceedings shall be conducted pursuant to ORS 33.210 et seq. and the rules of the American Arbitration Association, except as provided otherwise.

(d) Each party shall pay the fees and expenses of the arbitrator appointed by such party and one-half of the fees and expenses of the third arbitrator, if any.

25. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.

26. Authorization. The person signing this Agreement on behalf of Consultant hereby covenants and warrants he or she is authorized to do so and that his or her signature will fully bind Consultant to the terms and conditions of this Agreement. Upon City's request, Consultant shall provide City with evidence reasonably satisfactory to City confirming the foregoing covenants and warranties.

FIRST AMENDMENT TO PERSONAL SERVICES AGREEMENT

THIS AMENDMENT TO THE PERSONAL SERVICES AGREEMENT is entered into this 1st day of April 2016 between CITY OF OREGON CITY ("City") and Brown & Brown Northwest ("Consultant") for Insurance Agent of Record Services.

RECITALS

A. City and Consultant entered into a personal services agreement dated April 1, 2016 through March 31, 2017. With the additional period of April 1, 2017 to June 30, 2017 to be included within services contract.

B. Section 1 of the Agreement, Term, states that the City shall have an option to extend the services for an additional two years at the City's sole discretion after the end of the contract June 1, 2017.

C. City and Consultant desire to amend the Agreement under the terms and conditions set forth below.

AGREEMENT

1. Term: The term of this Agreement, unless sooner terminated pursuant to provisions set forth in the agreement, shall be from April 1, 2017 to June 30, 2017. As per the Proposal for Services provided by the consultant to coincide with the original Request for Proposal, there will be no additional fee for services during this time frame.

2. Full Force and Effect: Except as provided herein, all other terms and conditions of the Agreement shall remain in Full Force and Effect.

DATED as of the first day written above.

CONSULTANT

CITY

BROWN & BROWN NORTHWEST

CITY OF OREGON CITY

By: 

By: 

Title: President

Title: City Manager

DATED: 5-6-16, 2016.

DATED: 5-6, 2016.

