

MEMO TO: City Council

FROM: John Marchione, Mayor

DATE: March 4, 2014

SUBJECT: **Approve Contract Extension with Bannon Carlson and Kessel, Inc. for Property and Liability Insurance Consulting Services**

I. RECOMMENDED ACTION:

Authorize a two-year contract extension, which would be the first of two renewal terms in an amount of \$27,000 each year.

II. DEPARTMENT CONTACTS:

Michael E. Bailey, Finance and I.S. Director 425-556-2160

III. DESCRIPTION:

Background: In 2008 the City was advised by the Washington State Risk Manager that we needed to change our business practices for property and liability insurance. As a result we conducted an RFP and hired Jim McDonald to conduct a review of our program and the best options. Mr. McDonald's review concluded that the City's risk program was sound but that changes would need to be made to conform to the direction from the state Risk Manager. Mr. McDonald recommended an RFP for brokerage services.

We conducted an RFP for brokerage services and received several responses resulting in a short-list of the top three. (Note: the current broker at the time did not offer a proposal.) A committee consisting of Jim McDonald, Irene Mock, and myself interviewed the top three firms and unanimously recommended contracting with Bannon, Carlson & Kessel.

Dan Delorenzo is the lead for public entities at Bannon, Carlson & Kessel. Since that time Mr. Delorenzo has worked with city staff to develop the information for quotes on liability and property insurance each year. In addition, Mr. Delorenzo has advised the City in a proactive way on matters relating to managing risks.

The initial contract for insurance consulting services was for a term of four years with two, two-year renewal terms. Staff is recommending that the City Council authorize a contract for the first of these renewal terms.

The initial compensation for these services was \$25,000 per year. In this fifth year the contractor has requested an increase of \$2,000 (which represents an annual increase amount of 2%). In many insurance consulting / broker relationships, the compensation is a percent of the premiums (usually in the 10% range). The recommended \$27,000 annual compensation equates to a commission of about 4% (the consultant does not earn any commissions on city insurance policies).

IV. IMPACT:

This action would maintain the City's current approach to analyzing risk management issues and opportunities, as well as assess the marketplace for insurance to mitigate the impact of these risks on the City.

Funds for this contract are available in the City's Risk Management budget.

V. ALTERNATIVES:

The City Council could advise that another procurement process is preferred, resulting in seeking new proposals on this service.

VI. TIME CONSTRAINTS:

The current contract expires on July 1, 2014

VII. LIST OF ATTACHMENTS:

- A. Proposed contract

Mike E. Bailey, Finance Director

Date

Approved for Council Agenda _____
John Marchione, Mayor

Date

Consulting Services Agreement

Non-Public Work

<p>PROJECT TITLE & IDENTIFICATION NUMBER (if # is known)</p> <p>2014-2015 Risk Management Broker Services</p>	<p>WORK DESCRIPTION (reference & list all attached exhibits)</p> <p>Exhibits A,B&C = Scope, Work & Payment Schedule Exhibit D - Renewal Provision</p>
<p>CONTRACTOR</p> <p>Bannon, Carlson & Kessel, Inc.</p>	<p>CITY PROJECT ADMINISTRATOR (Name, address, phone #)</p> <p>Mike Bailey City of Redmond 3NFN P.O. Box 97010 Redmond, WA 98073-9710 425-556-2160 mebailey@redmond.gov</p>
<p>CONTRACTOR CONTACT (Name, address, phone #)</p> <p>Daniel J. Delorenzo Bannon, Carlson & Kessel, Inc. 2121 - 70th Avenue W #B University Place, WA 98466 253-565-3500</p>	<p>BUDGET OR FUNDING SOURCE</p> <p>Insurance Fund 00510</p>
<p>FEDERAL ID #</p> <p>91-0673122</p>	<p>MAXIMUM AMOUNT PAYABLE, IF ANY</p> <p>\$ 54,000.00</p>
<p>SUPPLIER/CONTRACTOR'S REDMOND BUSINESS LICENSE ID #</p>	<p>COMPLETION DATE</p> <p>July 1, 2016</p>
<p>APPLICANT NAME</p>	<p>APPLICANT CONTACT (Name, address & phone #)</p>

THIS AGREEMENT is entered into on _____, 20__ between the City of Redmond, Washington, hereinafter called "the CITY", and the above person, firm or organization, hereinafter called "the CONSULTANT".

WHEREAS, the CITY desires to accomplish the above-referenced project; and

WHEREAS, the CITY does not have sufficient staff or expertise to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the project; and

WHEREAS, the CONSULTANT has represented to the CITY that the CONSULTANT is in compliance with the professional registration statutes of the State of Washington, if applicable, and has signified a willingness to furnish consulting services to the CITY, now, therefore,

IN CONSIDERATION OF the terms and conditions set forth below, or attached and incorporated and made a part hereof, the parties agree as follows:

1. **Retention of Consultant - Scope of Work.** The CITY hereby retains the CONSULTANT to provide professional services as defined in this agreement and as necessary to accomplish the scope of work attached hereto as Exhibit A and incorporated herein by this reference as if set forth in full. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this agreement.

2. **Completion of Work.** The CONSULTANT shall not begin any work under the terms of this agreement until authorized in writing by the CITY. The CONSULTANT shall complete all work required by this agreement according to the schedule attached as Exhibit B and incorporated herein by this reference as if set forth in full. A failure to complete the work according to the attached schedule, except where such failure is due to circumstances beyond the control of the CONSULTANT, shall be deemed a breach of this agreement. The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the CITY, in the event of a delay attributable to the CITY, or because of unavoidable delays caused by circumstances beyond the control of the CONSULTANT. All such extensions shall be in writing and shall be executed by both parties.

3. **Payment.** The CONSULTANT shall be paid by the CITY for satisfactorily completed work and services satisfactorily rendered under this agreement as provided in Exhibit C, attached hereto and incorporated herein by this reference as if set forth in full. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in the Scope of Work attached. The CONSULTANT shall be entitled to invoice

the CITY no more frequently than once per month during the course of the completion of work and services by the CONSULTANT. Invoices shall detail the work performed or services rendered, the time involved (if compensation is based on an hourly rate) and the amount to be paid. The CITY shall pay all such invoices within 30 days of submittal, unless the CITY gives notice that the invoice is in dispute. In no event shall the total of all invoices paid exceed the maximum amount payable set forth above, if any, and the CONSULTANT agrees to perform all services contemplated by this agreement for no more than said maximum amount.

4. Changes in Work. The CONSULTANT shall make such changes and revisions in the complete work provided by this agreement as may be necessary to correct errors made by the CONSULTANT and appearing therein when required to do so by the CITY. The CONSULTANT shall make such corrective changes and revisions without additional compensation from the CITY. Should the CITY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the CITY. This work shall be considered as Extra Work and will be paid for as provided in Section 5.

5. Extra Work.

A. The CITY may, at any time, by written order, make changes within the general scope of the agreement in the services to be performed. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work or services under this agreement, whether or not changed by the order, or otherwise affects any other terms or conditions of the agreement, the CITY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule or both; and (3) other affected terms, and shall modify the agreement accordingly.

B. The CONSULTANT must submit any "proposal for adjustment" under this clause within 30 days from the date of receipt of the written order to make changes. However, if the CITY decides that the facts justify it, the CITY may receive and act upon a proposal submitted before final payment of the agreement.

C. Failure to agree to any adjustment shall be a dispute under the Disputes clause of this agreement, as provided in Section 13. Notwithstanding any such dispute, the CONSULTANT shall proceed with the agreement as changed.

D. Notwithstanding any other provision in this section, the maximum amount payable for this agreement shall not be increased or considered to be increased except by specific written amendment of this agreement.

6. **Ownership of Work Product.** Any and all documents, drawings, reports, and other work product produced by the CONSULTANT under this agreement shall become the property of the CITY upon payment of the CONSULTANT'S fees and charges therefore. The CITY shall have the complete right to use and re-use such work product in any manner deemed appropriate by the CITY, provided, that use on any project other than that for which the work product is prepared shall be at the CITY'S risk unless such use is agreed to by the CONSULTANT.

7. **Independent Contractor.** The CONSULTANT is an independent contractor for the performance of services under this agreement. The CITY shall not be liable for, nor obligated to pay to the CONSULTANT, or any employee of the CONSULTANT, sick leave, vacation pay, overtime or any other benefit applicable to employees of the CITY, nor to pay or deduct any social security, income tax, or other tax from the payments made to the CONSULTANT which may arise as an incident of the CONSULTANT performing services for the CITY. The CITY shall not be obligated to pay industrial insurance for the services rendered by the CONSULTANT.

8. **Indemnity.** The CONSULTANT agrees to hold harmless, indemnify and defend the CITY, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of the CONSULTANT, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the CONSULTANT, its officers, agents, subconsultants or employees, in connection with the services required by this agreement, provided, however, that:

A. The CONSULTANT's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of the CITY, its officers, agents or employees; and

B. The CONSULTANT's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the CONSULTANT and the CITY, or of the CONSULTANT and a third party other than an officer, agent, subconsultant or employee of the CONSULTANT, shall apply only to the extent of the negligence or willful misconduct of the CONSULTANT.

9. **Insurance.** The CONSULTANT shall provide the following minimum insurance coverages:

A. Worker's compensation and employer's liability insurance as required by the State of Washington;

B. General public liability and property damage insurance in an amount not less than a combined single limit of two million dollars (\$2,000,000) for bodily injury, including death, and property damage per occurrence.

C. Professional liability insurance, if commercially available in CONSULTANT's field of expertise, in the amount of one million dollars (\$1,000,000) or more against claims arising out of work provided for in this agreement.

The amounts listed above are the minimum deemed necessary by the CITY to protect the CITY'S interests in this matter. The CITY has made no recommendation to the CONSULTANT as to the insurance necessary to protect the CONSULTANT'S interests and any decision by the CONSULTANT to carry or not carry insurance amounts in excess of the above is solely that of the CONSULTANT.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. Excepting the professional liability insurance, the CITY will be named on all insurance as an additional insured. The CONSULTANT shall submit a certificate of insurance to the CITY evidencing the coverages specified above, together with an additional insured endorsement naming the CITY, within fifteen (15) days of the execution of this agreement. The additional insured endorsement shall provide that to the extent of the CONSULTANT's negligence, the CONSULTANT's insurance shall be primary and non-contributing as to the City, and any other insurance maintained by the CITY shall be excess and not contributing insurance with respect to the CONSULTANT's insurance. The certificates of insurance shall cover the work specified in or performed under this agreement. No cancellation, reduction or modification of the foregoing policies shall be effective without thirty (30) days prior written notice to the CITY.

10. Records. The CONSULTANT shall keep all records related to this agreement for a period of three years following completion of the work for which the CONSULTANT is retained. The CONSULTANT shall permit any authorized representative of the CITY, and any person authorized by the CITY for audit purposes, to inspect such records at all reasonable times during regular business hours of the CONSULTANT. Upon request, the CONSULTANT will provide the CITY with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the CONSULTANT, but the CONSULTANT may charge the CITY for copies requested for any other purpose.

11. Notices. All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth in the box for the same appearing at the outset of this Agreement. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

12. **Project Administrator.** The Project Administrator shall be responsible for coordinating the work of the CONSULTANT, for providing any necessary information for and direction of the CONSULTANT's work in order to ensure that it meets the requirements of this Agreement, and for reviewing, monitoring and approving the quality and quantity of such work. The CONSULTANT shall report to and take any necessary direction from the Project Administrator.

13. **Disputes.** Any dispute concerning questions of fact in connection with the work not disposed of by agreement between the CONSULTANT and the CITY shall be referred for resolution to a mutually acceptable mediator. The parties shall each be responsible for one-half of the mediator's fees and costs.

14. **Termination.** The CITY reserves the right to terminate this agreement at any time upon ten (10) days written notice to the CONSULTANT. Any such notice shall be given to the address specified above. In the event that this agreement is terminated by the City other than for fault on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. In the event that services of the CONSULTANT are terminated by the CITY for fault on part of the CONSULTANT, the amount to be paid shall be determined by the CITY with consideration given to the actual cost incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the CITY at the time of termination, the cost of the CITY of employing another firm to complete the work required, and the time which may be required to do so.

15. **Non-Discrimination.** The CONSULTANT agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman, because of race, color, creed, religion, national origin, marital status, sex, age or handicap, except for a bona fide occupational qualification. The CONSULTANT understands that if it violates this provision, this agreement may be terminated by the CITY and that the CONSULTANT may be barred from performing any services for the CITY now or in the future.

16. **Compliance and Governing Law.** The CONSULTANT shall at all times comply with all applicable federal, state, and local laws, rules, ordinances, and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

17. **Subcontracting or Assignment.** The CONSULTANT may not assign or subcontract any portion of the services to be provided under this agreement without the express written consent of the CITY. Any sub-consultants approved by the CITY at the

outset of this agreement are named on Exhibit D attached hereto and incorporated herein by this reference as if set forth in full.

18. Non-Waiver. Payment for any part of the work or services by the CITY shall not constitute a waiver by the CITY of any remedies of any type it may have against the CONSULTANT for any breach of the agreement by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it under the agreement by the CITY. Waiver of any right or entitlement under this agreement by the CITY shall not constitute waiver of any other right or entitlement.

19. Litigation. In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this agreement, the parties agree that such actions shall be initiated in the Superior Court of the State of Washington, in and for King County. The parties agree that all questions shall be resolved by application of Washington law and that parties to such actions shall have the right of appeal from such decisions of the Superior Court in accordance with the law of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, in and for King County. The prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

20. Taxes. The CONSULTANT will be solely responsible for the payment of any and all applicable taxes related to the services provided under this agreement and if such taxes are required to be passed through to the CITY by law, the same shall be duly itemized on any billings submitted to the CITY by the CONSULTANT.

21. City Business License. The CONSULTANT has obtained, or agrees to obtain, a business license from the CITY prior to commencing to perform any services under this agreement. The CONSULTANT will maintain the business license in good standing throughout the term of this Agreement.

22. Entire Agreement. This agreement represents the entire integrated agreement between the CITY and the CONSULTANT, superseding all prior negotiations, representations or agreements, written or oral. This agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto. These standard terms and conditions set forth above supersede any conflicting terms and conditions on any attached and incorporate exhibit. Where conflicting language exists, the CITY'S terms and conditions shall govern.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

CONSULTANT:

CITY OF REDMOND:

By: _____
Title: _____

John Marchione, Mayor
DATED: _____

ATTEST/AUTHENTICATED:

City Clerk, City of Redmond

APPROVED AS TO FORM:

EXHIBIT A
SCOPE OF WORK

Scope of Work. The CONTRACTOR/CONSULTANT shall perform all services and provide all goods as identified below:

- A. Marketing of Insurance Program. Organize data into presentation to underwriter; design most appropriate strategy to obtain desired coverage. Negotiate best terms of coverage and cost. Evaluate commitment and financial stability of underwriter. Draft policy wording to fit risk.
- B. Policy Wording. Verify policy and check for accuracy in compliance and specifications.
- C. Loss Reporting. Assist in the collection and tendering of losses to the underwriter.
- D. Billing. Responsibility for billing and sub-billing of premiums. Premium must be net of commission.
- E. Risk identification. Assist in the identification and evaluation of loss exposure as requested, including comparative data regarding other public entities with the size and scope of the City of Redmond.
- F. Annual Report. Preparations of an annual report within 30 days after policy year end, including: schedule of policies in force, summarized by premium dollars; number of losses and dollar value of losses and commission/fee earned; new trends and developments; and proposed changes in the City of Redmond's programs.
- G. Marketing Strategy. Involvement in a marketing strategy meeting with the City of Redmond's staff prior to renewal activities. Conduct an analysis of the City of Redmond's exposure to loss, adequacy of current coverage and options for coverage and risk financing not presently in place.
- H. Marketing Results. Preparation of marketing reports, due 30 days prior to renewal, including a summary of markets approached; rating of top four markets; timeline of marketing, broker recommendations and rationale.
- I. Accounting Service. Availability to handle normal day-to-day activities associated with the account, including consultation. Activities include, but are not limited to: service existing insurance policies by tendering losses, reviewing coverage issues, assisting the collection of losses, reporting values, issuing certificates of insurance as needed and processing policy changes, etc., in a timely manner.
- J. Communication. Schedule quarterly meetings with the City of Redmond to discuss loss control issues, exposure changes and general administrative matters.
- K. Meetings. Attend the City of Redmond meetings as requested.

- L. Special Projects. New projects of an external nature will be compensated on a negotiated fee, agreed to in writing, in advance of such project commencing.

EXHIBIT B

Work and Payment Schedule.

Total compensation for services rendered will be firm fixed annual fees based on the below schedule and consultant shall invoice the city monthly twelve equals payments each year as provided for in paragraph three of the agreement:

Annual Fixed Fees:
Year 1 \$27,000
Year 2 \$27,000

Exhibit C

1. SERVICES BY CONTRACTOR

By mutual agreement, both parties agree to exercise renewal of the original agreement as outlined and provided for in the ORIGINAL AGREEMENT. Completion date for providing identified services shall be amended to July, 1, 2016.

The scope of services and work schedule as identified in the ORIGINAL AGREEMENT, or by subsequent amended to the ORIGINAL AGREEMENT, shall remain as agreed upon.

All other scope of work, completion of work, and identified terms and conditions referenced in the ORIGINAL AGREEMENT, or by subsequent amendment thereto, shall govern this agreement.

2. PAYMENT

The CITY shall pay the CONTRACTOR a firm fixed annual fee of \$27,000 for year one and \$27,000 for year two.

All payment terms and conditions referenced in the ORIGINAL AGREEMENT, or by subsequent amendment, shall govern this agreement and are attached thereto.

3. TERMINATION OF AGREEMENT

All termination terms and conditions referenced in the ORIGINAL AGREEMENT, or by subsequent amendment, shall govern this agreement.

4. TERMS AND CONDITIONS

The City standard, terms and conditions, referenced in the ORIGINAL AGREEMENT shall govern this agreement.

5. INSURANCE

The CONTRACTOR shall maintain insurance as set forth in the ORIGINAL AGREEMENT, or subsequent amendment thereto.

EXHIBIT D

OPTION FOR RENEWAL

CITY reserves the right to renew this contract for two two-year terms, if mutually agreed to by both parties in writing. If renewal provision is exercised, all terms and conditions of original contract remain in full force and effect. Such a renewal will be accomplished through the use of an addendum to the original contract. Renewal options may be eligible for adjustment at the current CPI-W rate in effect at the time of renewal.

Any changes to the scope of work, work schedules and fee and reporting schedules shall be agreed to in writing by both parties.