

# Council Business Meeting

July 16, 2019

<b>Agenda Item</b>	Approval of a three-year contract with Brown & Brown Northwest for Professional Risk Management Services for \$141,355	
<b>From</b>	Tina Gray	Human Resource Director
<b>Contact</b>	<a href="mailto:tina.gray@ashland.or.us">tina.gray@ashland.or.us</a> (541) 552-2101	

## **SUMMARY**

Staff is requesting approval of a contract for Professional Risk Management Services with Brown & Brown Northwest (B&BNW) to augment and replace staff resources that were eliminated in the FY 19/21 Budget.

## **POLICIES, PLANS & GOALS SUPPORTED**

Provide cost-effective core city services.

## **PREVIOUS COUNCIL ACTION**

The Council has not taken previous action on this item. Previous contracts with Brown & Brown Northwest were below the threshold requiring Council approval.

## **BACKGROUND AND ADDITIONAL INFORMATION**

The City has been contracting with Brown & Brown Northwest (B&BNW) for the past six years for Risk Management consulting services, so they are familiar with our organization and staff. During that time, the City was a direct client of City County Insurance (CIS) and we had a full-time Risk Specialist on staff to coordinate risk management activities for the City. During the 2019-2021 biennial budget process, the Risk Specialist position was eliminated to help achieve the savings needed to balance the budget. Administrative Services Director, Mark Welch, spoke to B&BNW about expanding their scope of services to become our Agent of Record and to perform some of the work previously being performed by the Risk Specialist. B&BNW provides similar services to cities, counties and special districts; they are one of the largest consulting firms in the northwest that specializes in the needs of public agencies with local office support in Medford.

The expanded services that B&BNW will provide under the new contract will include: Consultation, training and advice on risk-related activities for the City; securing proper insurances to protect the City's interests; preparing certificates of insurance; processing claims for damage against the City; and providing access to proprietary risk software for pro-active claims management.

As the needs of the City in the area of risk management are very specialized, there are not many firms qualified to bid. In order to expedite the process, the City participated in a cooperative purchasing arrangement which allowed us to join a bid process used recently by the City of Tigard. B&BNW was one of two firms competing for the contract and ultimately was the successful bidder. Ashland has already been working with B&BNW on a consulting basis and their expertise has been invaluable.

## **FISCAL IMPACTS**

The City has been contracting with B&BNW as our Risk Management Advisor and the cost for consultative services has been \$18,996 annually. The new contract increases the scope of services making them the City's Agent of Record which allows them to place lines of coverage on the City's behalf and negotiate favorable renewal rates by speaking directly to policy underwriters. They will also take over claims management responsibilities that we no longer have the staff resources to handle. The three-year contract before council represents an increase of \$24,087 per year for the additional scope of work, and it includes a three percent escalation in the second and third year. The total cost of the three-year contract is \$141,355. Compared to the annual salary, benefit and retirement costs for a

staff position over that same period, the City will recognize significant savings. The contract with B&BNW will be covered by the savings from laying off a full-time staff position and will be funded out of the Insurance Fund. We believe that B&BNW has the capability to augment staff work and provide first-rate Risk Management services to the City of Ashland.

**STAFF RECOMMENDATION**

Staff recommends approval of a contract with Brown & Brown Northwest for professional Risk Management services.

**ACTIONS, OPTIONS & POTENTIAL MOTIONS**

- I move to approve a three-year contract for Professional Risk Management Services with Brown & Brown Northwest for a total of \$141,355.
- I move to postpone approval of a contract for Professional Risk Management Services with Brown & Brown Northwest pending additional information.

**REFERENCES & ATTACHMENTS**

Attachment 1: Contract for Professional Services with Brown & Brown Northwest

Attachment 2: Contract Addendum with additions requested by the City of Ashland Legal Department.

## BROKER SERVICES AGREEMENT

THIS **BROKER SERVICES AGREEMENT** (this "Agreement"), effective August 1, 2019 (the "Effective Date"), is made by and between **CITY OF ASHLAND** ("City"), and the Medford office of **BROWN & BROWN OF OREGON, LLC D/B/A BROWN & BROWN NORTHWEST** ("Broker").

### Background

City wishes to retain Broker to perform certain specified insurance services as described in this Agreement. Broker wishes to perform such services according to the terms and conditions in this Agreement for the compensation set forth in this Agreement. The parties agree as follows:

1. **Term.** The term of this Agreement shall commence on the Effective Date and continue for a period of thirty-five (35) months, unless sooner terminated as herein provided.

2. **Relationship of Parties.** Broker is an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship, a joint venture relationship or partnership relationship. In consideration of the compensation paid to the Broker by the City, Broker will provide services to the City as an insurance broker. City acknowledges that Broker, or its parent City, Brown & Brown, Inc. ("Parent"), and related or affiliated companies (collectively with Parent, "B&B Affiliates"), may provide services as an insurance agent on behalf of certain insurance carriers or risk-bearing entities. City expressly consents to such relationship, if applicable, in the rendition of services by Broker under this Agreement.

3. **Broker Services.** Broker, subject to the terms of this Agreement, shall provide certain services set forth in the attached Schedule A (the "Services"), but only in relation to the lines of insurance identified in Schedule A ("Lines of Insurance").

**Nothing in this Agreement shall be construed to impose any obligations on Broker or limitations on Broker's compensation, relative to any lines of insurance or coverages other than as specifically delineated in Schedule A.**

4. **City Responsibilities.** In consideration of the Services provided by Broker, City agrees as follows:

(a) City shall cooperate fully with Broker and the insurance companies with whom Broker solicits in the performance of Broker's obligations under this Agreement.

(b) City shall timely produce and complete accurate information including, but not

limited to, current financial information, statements of values, loss information and any other information, necessary for the effectuation of insurance coverage at the request of Broker. City further agrees to provide Broker with notice of any material changes in City's business operations, risk exposures or in any other material information provided under this Agreement. In addition, City shall carefully read each insurance policy issued to City in order to confirm the accuracy of the facts reflected therein and that the policy(ies) contain(s) the terms and coverages desired. City is responsible for recommending any changes to insurance policies issued to City.

(c) City shall timely pay all premiums and fees.

(d) City shall provide Broker with at least ninety (90) days notice in advance of any policy effective date in the event City intends to allow competing agents or brokers to solicit or market insurance to City.

5. **Compensation.** In consideration of the Services, City shall compensate Broker as set forth in Schedule B (the "Broker Services Fee"). With regard to the Broker Services Fee, City and Broker acknowledge and agree as follows:

(a) **The Broker Services Fee is not a part of, but rather is in addition to, any premium that may be paid by the City for the Lines of Insurance.**

(b) It is understood and agreed that Broker, or B&B Affiliates, may receive contingent payments or allowances from insurers based on factors which are not client-specific, such as the performance and/or size of an overall book of business produced with an insurer. Such contingent payments or allowances are not subject to this Agreement and will not be credited against the balance of the Broker Services Fee owed to Broker pursuant to this Agreement or paid to City.

(c) Broker may utilize insurance intermediaries (such as a wholesale insurance broker, managing general agent (MGA), managing general underwriter or reinsurance broker) for the placement of City's insurance. In addition to providing access to the insurance City, the intermediary may provide the following services: (i) risk placement; (ii) coverage review; (iii) claims liaison services with the insurance City; (iv) policy review; and (v) current market intelligence. The compensation received by the insurance intermediary for placements and, if applicable, the services above is typically in the range of 5% to 15% of policy premium. There may be an intermediary utilized in the placement of your insurance, which may or may not be a B&B Affiliate. Any payments or allowances paid to the intermediary are not subject to this Agreement and will not be credited against the balance of the fee owed to Broker pursuant to this Agreement or paid to City.

(d) If City chooses to finance its premiums, Broker may assist City in the arrangement of such financing. Any payments or allowances paid to Broker for arranging premium financing are not subject to this section and will not be credited against the balance of the fee owed to Broker pursuant to this Agreement or paid to City.

(e) Broker may, in the ordinary course of its business, receive and retain interest on premiums paid by the City from the date received by Broker until the date the premiums are remitted to the insurance City or intermediary. Any interest income retained by Broker on these premiums are not subject to this section and will not be credited against the balance of the fee owed to Broker pursuant to this Agreement or paid to City.

(f) Compensation for the Services specified under this Agreement is exclusive of all federal, state and local sales, use, excise, receipts, gross income and other similar taxes and governmental charges and fees. Any such taxes, charges or fees for the Services under this Agreement, now imposed or hereafter imposed during the term of this Agreement, shall be in addition to the compensation, premiums and charges set forth in this Agreement and shall be paid by City upon request.

(g) City acknowledges and agrees that the Broker Services Fee is reasonable in relation to the Services to be provided by Broker hereunder.

6. **Confidentiality.** To the extent consistent with performances of Broker's duties under this Agreement, Broker and City agree to hold in confidence Confidential Information (defined below). City acknowledges, however, that Broker will disclose Confidential Information as reasonably required in the

ordinary course of performing the Services to insurance companies and other insurance intermediaries. "**Confidential Information**" means all nonpublic information and all documents and other tangible items (whether recorded information, on paper, in computer readable format or otherwise) relating to the disclosing party's business (including without limitation business plans, manner of doing business, business results or prospects), proposals, recommendations, marketing plans, reports, any of which (i) at the time in question is either protectable as a trade secret or is otherwise of a confidential nature (and is known or should reasonably be known by receiving party as being of a confidential nature) and (ii) has been made known to or is otherwise learned by receiving party as a result of the relationship under this Agreement. Confidential Information should be protected with the same reasonable care as each party protects its own Confidential Information.

Confidential Information will not include any information, documents or tangible items which (i) are a matter of general public knowledge or which subsequently becomes publicly available (except to the extent such public availability is the result of a breach of this Agreement), (ii) were previously in possession of receiving party as evidenced by receiving party's existing written records, or (iii) are hereafter received by receiving party on a non-confidential basis from another source who is not, to receiving party's knowledge, bound by confidential or fiduciary obligations to disclosing party or otherwise prohibited from transmitting the same to receiving party. In the event that Broker or City become legally compelled to disclose any of the Confidential Information, they shall provide the other party with prompt notice so that such party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or that the other party waives compliance with the provisions of the Agreement, such party may disclose such information as is necessary or advisable to comply with the legal process.

## 7. **Termination.**

(a) Either party may terminate this Agreement, without cause and for any reason whatsoever, by giving written notice of termination to the other party at least ninety (90) days prior to the effective date of termination, which shall be specified in such written notice.

(b) Notwithstanding the provisions in sub-paragraph (a) above, City may terminate this Agreement upon the happening of any one of the

following causes: (i) Suspension or termination of Broker's insurance license in the State of Oregon if not cured by Broker within sixty (60) days following such suspension or termination; (ii) Broker's participation in any fraud; or (iii) Broker's material failure to properly perform its duties and responsibilities hereunder because of Broker's gross neglect, proven dishonesty, or commission of a felony.

(c) Notwithstanding the provisions in sub-paragraph (a) above, Broker may terminate this Agreement upon the happening of any one of the following causes: (i) City's failure to pay any Broker Services Fee more than five (5) days after such payment is due; (ii) City's participation in any fraud; or (iii) City's material failure to properly perform its duties and responsibilities hereunder because of City's gross neglect, proven dishonesty, or commission of a felony.

Termination for any cause enumerated in sub-paragraphs (b) or (c) shall become effective upon the delivery of written notice of termination to the breaching party or at such later time as may be specified in the written notice.

(d) Termination of this Agreement shall not release City from any accrued obligation to pay any sum to Broker (whether then or thereafter payable) or operate to discharge any liability incurred prior to the termination date.

8. **Notices.** Any notices required or permitted to be given under this Agreement shall be sufficient if in writing by Certified Mail to:

If to City:

City of Ashland  
20 E. Main Street  
Ashland, OR 97520  
Attn: Tina Gray  
Email: [Tina.Gray@ashland.or.us](mailto:Tina.Gray@ashland.or.us)

If to Broker:

Brown & Brown of Oregon LLC; dba: Brown & Brown Northwest  
3256 Hillcrest Park Drive  
Medford, OR 97504  
Attn: David F. Cuttrel  
Email: [dcutrell@bbnw.com](mailto:dcutrell@bbnw.com)

With copy to:

Brown & Brown, Inc.  
220 S. Ridgewood Avenue  
Daytona Beach, FL 32114  
Attn: General Counsel  
Email: [legaldept@bbins.com](mailto:legaldept@bbins.com)

or such other address as either shall give to the other in writing for this purpose.

9. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision.

10. **Oregon Law Applies; Venue.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Oregon without regard to its conflicts of laws principles. Exclusive venue is agreed to be in a state or federal court of competent jurisdiction in or for Jackson County, Oregon.

11. **Limitation of Liability; Waiver of Jury Trial.** THE PARTIES WAIVE ANY RIGHT TO A TRIAL BY JURY IN THE EVENT OF LITIGATION ARISING OUT OF THIS AGREEMENT. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA OR USE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

12. **Assignment.** Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. This Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and permitted assigns.

13. **Entire Agreement.** This Agreement (including the schedules, documents and instruments referred to herein or attached hereto) constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof. The Agreement shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of

City and Broker by their respective duly authorized representatives.

**Remainder of page intentionally left blank – signature page follows.**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Effective Date.

**CITY:**

**BROKER:**

**City of Ashland**  
an Oregon public entity

**Brown & Brown of Oregon LLC; dba: Brown & Brown  
Northwest**  
an Oregon limited liability company

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

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

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

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

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

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

## SCHEDULE A

### **BROKER SERVICES**

Subject to the terms of this Broker Services Agreement, Broker shall provide the Services listed below, but only in relation to the following Lines of Insurance: (a) Commercial Property; (b) Boiler & Machinery; (c) Earthquake; (d) Flood (Package); (e) Commercial Auto; (f) Crime; (g) Inland Marine; (h) General Liability; (i) Liquor Liability; (j) Umbrella/Excess Liability; (k) Professional Liability; (l) Directors & Officers Liability; (m) Employment Practices Liability; (n) Aviation Liability; (o) Environmental Liability; and (p) Excess Workers Compensation.

**Services are as follows:**

- a. Evaluate City's business practices with regard to risk and possible transfer of risk to third parties and conduct regular, scheduled meetings with City to review City's risk management program.
- b. Review and analyze City's existing insurance coverage and identify potential lines of coverage or coverage enhancements to improve City's insurance program.
- c. Analyze current insurance market conditions and advise City of significant implications for City's insurance program.
- d. Facilitate, market, and procure quotations from carriers; review and analyze quotations and provide proposals for review by City.
- e. Secure and bind all coverage accepted by City.
- f. Coordinate loss prevention services provided by any insurance City with those services provided by Broker.
- g. Analyze past and current claim and loss history information and advise City of significant implications for City's insurance program.
- h. Other services

**SCHEDULE B**  
**COMPENSATION**

**Broker Services Fee:**

In consideration of the Services, City shall compensate Broker as follows:

<b>POLICY TERM</b>	<b>BROKER SERVICES FEE</b>
8/1/2019 – 6/30/2020	\$43,083.00 (11 months)
7/1/2020 – 6/30/2021	\$48,410.00
7/1/2021 – 6/30/2022	\$49,862.00

In consideration of the Services, City shall compensate Broker **in the amount of ONE HUNDRED FORTY-ONE THOUSAND THREE HUNDRED FIFTY FIVE DOLLARS AND 00/100 (\$141,355.00)** (the "Broker Services Fee"). The Broker Services Fee shall be fully earned and payable in annual installments on July 1, 2020 and July 1, 2021 during the term of this Agreement; provided, however that the initial payment shall be due and payable upon City's execution and delivery of this Agreement. The Broker Services Fee is not a part of, but rather is in addition to, any premium that may be paid by the City.

**Insurer Commissions:**

Broker agrees that it will not receive any commission for the placement of City's insurance business pursuant to this Agreement. If Broker receives any such commission payments from an insurer in error or otherwise, Broker agrees to refund the Broker Service Fees in the amount of such commission payment, credit the commission against the Broker Services Fee or take such other action, if any, as shall in all cases comply with applicable law.

**Addendum to the  
BROKER SERVICES AGREEMENT (the “Agreement”)**

between

**THE CITY OF ASHLAND, AN OREGON MUNICIPAL CORPORATION (“CITY”),  
and  
BROWN & BROWN OF OREGON, LLC, DBA BROWN & BROWN NORTHWEST,  
 (“BROKER”).**

To the extent this Addendum and the terms and conditions of the Agreement conflict, this Addendum shall control. This Addendum amends the terms and conditions of the Agreement as follows:

1. Add the following new Section 14 to the Agreement as follows:

**14. Oregon Laws.** The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, ORS 279B.230, and ORS 279B.235.

3. Add the following new Section 15 to the Agreement as follows:

**15. Indemnification.** BROKER shall defend, save, hold harmless and indemnify the CITY and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from, or arising out of, BROKER’S, or its officers’, employees’, contractors’, or agents’ negligence or willful misconduct.

4. Add the following new Section 16 to the Agreement as follows:

**16. General Liability Insurance.** BROKER shall obtain and keep in effect at its sole cost during the term of this Agreement commercial general liability insurance covering bodily injury and property damage. This insurance shall also include contractual liability coverage under this Agreement. The combined single limit per occurrence shall not be less than two million U. S. dollars (\$2,000,000). An endorsement to this insurance shall name the City of Ashland, its officials, officers, agents and employees as additional insureds to the extent of BROKER’S negligence or willful misconduct.

5. Add the following new Section 17 to the Agreement as follows:

**17. Oregon Tax Law.** BROKER’S compliance with tax law:

(1) BROKER represents and warrants to the CITY that:

BROKER shall, throughout the term of this Agreement, including any extensions hereof, comply with:

(i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;

- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to BROKER; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

BROKER, for a period of no fewer than six (6) calendar years preceding the Effective Date, has faithfully complied with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to BROKER; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

- (2) BROKER’S failure to comply with the tax laws of the State of Oregon and all applicable tax laws of any political subdivision of the State of Oregon shall constitute a material breach of this Agreement.

Except as specifically modified by this Addendum, the Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have caused this Addendum to be signed in their respective names by their duly authorized representative as of the dates set forth below.

**THE CITY OF ASHLAND, OREGON:**

**BROWN & BROWN OF OREGON:**

By: \_\_\_\_\_  
 Kelly A. Madding, City Administrator

By: \_\_\_\_\_  
 (must be officer of the Company)

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

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

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

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

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