

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
SEPTEMBER 21, 2021 AGENDA**

Subject:	Type:	Submitted By:
INSURANCE BROKER AGREEMENT - ADDENDUM ONE	◆ RESOLUTION ORDINANCE RECEIVE/FILE	PAM BUETHE CITY CLERK

SYNOPSIS

A resolution has been prepared approving Addendum One to the agreement with FNIC (The Harry A. Koch Co.) to extend the term for broker services for property, casualty, liability and workers compensation insurance coverages to September 30, 2022.

FISCAL IMPACT

The FY21/FY22 Biennial Budget provides funding for these services.

RECOMMENDATION

Approval.

BACKGROUND

In March of 2014 Council approved an interlocal cooperation agreement between the cities of Hastings, Holdrege, Papillion and La Vista that created an Insurance Service Group and authorized the cities to work collectively with an insurance consultant to jointly select an insurance broker who would market and manage insurance coverages for said cities. The goal of the interlocal was to improve the product quality and cost efficiency of the insurance coverage for all parties.

In May of 2014 Council approved a one-year agreement with Arthur J. Gallagher & Co. for insurance agency/broker services with the option to annually renew through September 30, 2019.

In April 2019 the Insurance Service Group issued a Request for Proposals for Insurance Agency/Broker Services. Six proposals were received. Interviews with representatives from the top three proposals were held in May 2019 and upon completion of the interviews the Insurance Service Group selected The Harry A. Koch Company as the new Broker.

In June of 2019 Council approved a one-year agreement with The Harry A. Koch Company for insurance agency/broker services with the option to annually renew through September 30, 2023.

The agreement provides for an annual broker fee to be paid to FNIC, which is split pro rata among the Cities in the Insurance Service Group which are party to the Agreement. La Vista's pro rata share has historically been \$26,903. Although the City of Holdrege has withdrawn recently from the group, there is no increase anticipated in the City's share.

This Addendum One will extend the agreement with FNIC (The Harry A. Koch Company) to September 30, 2022.

The Harry A. Koch Company has been part of First Insurance Group LLC, a subsidiary of the Lauritzen Corporation for many years. They successfully operated as seventeen decentralized, individual agencies throughout Nebraska, Iowa, South Dakota and Illinois. However, as they worked together and shared resources, they saw they could better serve their customers by unifying their organization and brand thus the name change to FNIC.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, APPROVING ADDENDUM ONE TO THE AGREEMENT WITH FIRST INSURANCE GROUP LLC DBA FNIC (FORMERLY THE HARRY A. KOCH COMPANY) TO EXTEND THE EXPIRATION DATE OF THE INSURANCE BROKER SERVICES AGREEMENT THROUGH SEPTEMBER 30, 2022.

WHEREAS, The City of La Vista and First Insurance Group LLC dba FNIC (formerly The Harry A. Koch Company) entered into an Agreement dated June 5, 2019 ("Agreement"); and

WHEREAS, the term of the Agreement was for October 1, 2019 through September 30, 2020; and

WHEREAS, The City of La Vista and First Insurance Group LLC dba FNIC (formerly The Harry A. Koch Company) wish to execute Addendum One to extend the expiration date of the Agreement to September 30, 2022

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of the City of La Vista, Nebraska, hereby approves Addendum One to the agreement with First Insurance Group LLC dba FNIC (formerly The Harry A. Koch Company) to extend the expiration date of the Agreement to September 30, 2022 and authorizes the Mayor to execute said addendum.

PASSED AND APPROVED THIS 21ST DAY OF SEPTEMBER 2021.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Bueth, CMC
City Clerk

**ADDENDUM ONE TO
AGREEMENT FOR INSURANCE AGENCY/BROKER SERVICES**

This Addendum One ("Addendum One") is entered into this ____ day of _____, 2021, by and between the City of La Vista, Nebraska (hereinafter referred to as "City") and First Insurance Group LLC d/b/a FNIC (formerly The Harry A. Koch Company, hereinafter referred to as "Broker").

WHEREAS, City and Broker entered into an Agreement dated June 5, 2019 ("Agreement"), which is attached hereto and incorporated herein as Exhibit A; and

WHEREAS, the term of the Agreement was for October 1, 2019, through September 30, 2020; and

WHEREAS, City and Broker modified the initial term to begin on or about July 12, 2019; and

WHEREAS, City and Broker wish to enter into Addendum One in order to extend the term of the Agreement to September 30, 2022, as allowed by Article 1 of the attached Agreement, and to ratify the Agreement to be effective from July 12, 2019 through the present. All other terms and conditions of the Agreement shall remain in full force and effect.

NOW THEREFORE, in consideration of the promises contained herein, the parties hereto agree to extend the term of the Agreement to September 30, 2022, and to ratify the Agreement to be effective from July 12, 2019 through the present.

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City:

CITY OF LA VISTA, NEBRASKA,
A Nebraska Municipal Corporation

Douglas Kindig, Mayor

Attest:

Pamela A. Buethe, CMC
City Clerk

(S E A L)

BROKER:

By: _____

Its: _____

STATE OF NEBRASKA)
) ss
COUNTY OF _____)

On _____, 2021, before me, Notary, personally appeared _____
personally known to me to be the person whose name is subscribed to the within instrument and
acknowledged to me that he executed the same in his authorized capacity on behalf of First Insurance Group
LLC d/b/a FNIC and that by his/her signature on the instrument executed the instrument.

WITNESS my hand and official seal.

Notary Public

Exhibit A

AGREEMENT FOR INSURANCE AGENCY / BROKER SERVICES

THIS AGREEMENT (hereinafter referred to as "Agreement") is made and entered into this 9th day of May June, 2019 by and between the City of La Vista, Nebraska, a Nebraska municipal corporation (hereinafter referred to as "La Vista") and The Harry A. Koch Company (hereinafter referred to as "Broker") (collectively, hereinafter referred to as the "Parties").

WITNESSETH:

WHEREAS, insurance agency broker services are necessary to gain access to property, workers' compensation, and liability insurers; and

WHEREAS, La Vista, the City of Papillion, Nebraska (hereinafter referred to as "Papillion"), the City of Holdrege, Nebraska (hereinafter referred to as "Holdrege"), and the City of Hastings, Nebraska (hereinafter referred to as "Hastings"), (collectively, hereinafter referred to as the "Cities of Nebraska") issued a Request for Proposals for Insurance Agency/Broker Services dated April 19, 2019 ("RFP") attached to this Agreement as **Attachment A**, which describes the Cities of Nebraska's desired scope of work for an insurance broker, as specifically stated in the Scope of Work Section 2-1 ("Services") of the RFP; and

WHEREAS, Broker submitted a Proposal dated May 8, 2019 ("Proposal") attached to this Agreement as **Attachment B**, in response to the Cities of Nebraska's RFP; and

WHEREAS, Broker represents that it is capable and prepared to provide such Services.

NOW THEREFORE, in consideration of the foregoing recitals and the terms and conditions hereinafter set forth, the Parties hereto agree as follows:

ARTICLE 1 - TERM

The term of this Agreement shall commence October 1, 2019 and extend through September 30, 2020 unless otherwise terminated as provided in this Agreement. This Agreement may be extended by mutual agreement of the Parties for up to four (4) additional one (1) year terms by executing an Addendum at least twenty-one (21) days prior to expiration of this or any subsequent term.

ARTICLE 2 – AGREEMENT ADMINISTRATION

The Agreement shall be administered by Broker on behalf of City. Broker shall report directly to the City Administrator or his/her designee.

ARTICLE 3 - SERVICE TO BE PERFORMED BY BROKER

Broker shall perform the Services, as specifically stated in the RFP, and in accordance with provisions of Broker's Proposal, which shall be considered to be approved by City through the award of this Agreement to Broker, such that the insurance coverage for City shall become effective October 1, 2019. Not in limitation of the foregoing sentence, if any provision of Broker's Proposal is contrary to any part of the RFP and not expressly approved by City in this Agreement, said provision shall be deemed rejected by City and not part of this Agreement.

ARTICLE 4 - BROKER'S FEES AND PREMIUM PAYMENTS

City, in consideration of Broker's performance in accordance with this Agreement and the provision of Services outlined in the RFP, agrees to pay Broker a fee of \$26,903, which is City's pro rata share of the total flat annual brokerage fee of \$140,000 as set forth in the Proposal, for all services performed during the initial term of this Agreement. Broker shall bill City for its Services and duties herein quarterly in four (4) equal installments coinciding with City's fiscal year for budget purposes and City shall pay within thirty (30) days of receipt of each quarterly billing. The first bill for Broker's fee and any additional expenses, if any, shall be due no earlier than October 15th of any term as set forth in Article 1. If City should extend the Agreement for an additional term or terms as provided herein, the fee to Broker for terms 2 through 5 shall be the same as for the initial term. Invoicing and payment shall be handled in the same manner for all terms.

Broker shall issue a single invoice to City for the total of City's annual insurance premiums, unless otherwise agreed by the Parties. It is understood endorsement and audit invoices may occur from time to time and will be outside of the annual insurance premiums. Payments for the insurance premiums shall be considered to be separate from Broker's fees. All insurance premium invoices shall be billed no later than forty-five (45) days prior to the due date to allow adequate time for City's payment. Thereafter, upon receipt of City's payment, made payable to Broker, Broker shall promptly pay the applicable insurance premium to guarantee that all premium payments remain current with the insurance carrier. Broker shall provide City with a receipt of payment within fifteen (15) days of such payment. The first bill for the insurance premiums shall be due no earlier than October 15th of any coverage year.

ARTICLE 5 - INDEMNIFICATION

Broker shall, in addition to any other obligation, indemnify City and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless City, their agents, elected officials and employees, and each of them, from and against all claims, actions, liabilities, and costs (including without limitation attorney's fees and litigation costs) either in whole or in part arising out of or resulting from any negligent act or omission of Broker, any sub-consultant, or anyone directly or indirectly employed by Broker or for whose acts any of them may be liable in the performance of the Services and the provisions of this Agreement. Any cost or expenses, including attorney's fees, incurred by City to enforce this Agreement shall be borne by Broker.

Upon completion of the Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

ARTICLE 6 - INDEPENDENT CONTRACTOR

Broker undertakes performance of the Services and duties as provided herein as an independent contractor and shall be wholly responsible for the methods of performance. Broker is not and shall not be considered an employee of City. Broker is responsible for all federal, state and local taxes, if any, relating to its compensation hereunder.

ARTICLE 7 - COMPLIANCE WITH LAWS

In performance of the Services and duties herein, Broker shall comply with all applicable regulatory requirements, federal, state, and local laws, rules, regulations, orders, codes, criteria and standards.

ARTICLE 8 – BROKER'S INSURANCE

During the performance of this Agreement and thereafter for a period at least equal to the longest applicable statute of limitations period under Nebraska law, Broker at its sole cost shall maintain its own insurance policies, as listed below, and provide City with certificates of insurance confirming the required protection on standard Acord forms prior to commencing work under this Agreement. Any insurance policy required herein that is cancelled or non-renewed shall be replaced with no gap in protection coverage and a current certificate of insurance shall be provided to City. Broker shall provide written notice to City at least thirty (30) days prior to material modification or cancellation of any policy listed on the certificates and Broker shall provide for uninterrupted coverage in accordance with this Agreement by obtaining equal or greater additional or replacement coverage or coverages. The following insurance coverages shall be written by an insurance company or companies authorized to do business in the State of Nebraska.

1. Workers' Compensation Insurance: Broker shall procure and maintain Workers' Compensation Insurance covering all of Broker's employees with limits meeting all applicable state and federal laws. This coverage shall include Employer's Liability in the minimum amount of \$500,000 each occurrence. Broker agrees to require any sub-consultant or subcontractors, if any, to maintain the workers' compensation insurance coverage provided herein.

2. Commercial General Liability: Broker shall procure and maintain Commercial General Liability Insurance. This coverage shall be on an "Occurrence" basis. This policy shall provide coverage for death, personal injury or property damage that could arise directly or indirectly from the performance of this Agreement. The minimum limits of coverage shall be \$1,000,000 per occurrence and \$2,000,000 in the general aggregate.

3. Business Automobile Liability: Broker shall procure and maintain Business Automobile Liability Insurance. The minimum limits of coverage shall be \$500,000 for any one accident or loss, combined single limit for bodily injury and property damage. This coverage shall include all owned, hired and non-owned autos.

4. Professional Liability: Broker shall procure and maintain Professional Liability Insurance. This insurance shall provide coverage against such liability resulting from this Agreement, including errors and omissions. The minimum limits of coverage shall be \$1,000,000 per occurrence. Any deductibles shall be the responsibility of the insured.

Any deductible amounts shall be the responsibility of Broker.

In the event that Broker's sub-consultants do not have insurance, or do not meet the insurance limits, Broker shall indemnify and hold City harmless for any claim in excess of the sub consultant's insurance coverage, arising out of negligent acts, errors or omissions, or intentional acts of the sub consultants.

ARTICLE 9 - CITY'S RESPONSIBILITIES

City shall work diligently to provide Broker with all necessary information needed by Broker to perform the duties of this Agreement.

ARTICLE 10 - TERMINATION OF AGREEMENT

City, notwithstanding anything in this Agreement or any renewal or extension of this Agreement to the contrary, reserves the right to terminate this Agreement with or without cause by providing thirty (30) days written notice of such termination to Broker. Fees payable to Broker under this Agreement shall be calculated on a pro-rata basis for the number of days to the termination date, with any applicable reimbursement remitted to City on or before the termination date. There is no obligation by City to provide written notice to Broker for the non-renewal of the Agreement or any extension hereof.

ARTICLE 11 - NONDISCLOSURE OF PROPRIETARY INFORMATION

Broker shall consider all information provided by City and all reports, studies, calculations, and other documentation resulting from Broker's performance of the Services and provisions of this Agreement to be proprietary unless such information is available from public sources. Broker shall not publish or disclose proprietary information for any purpose other than the performance of the Services without the prior written authorization of City or in response to legal process.

ARTICLE 12 - INTEGRATION AND MODIFICATION

This Agreement is adopted by the Parties as a complete and exclusive statement of the terms of the Agreement between the Parties. This Agreement supersedes all prior

agreements, contracts, proposals, representations, negotiations, letters or other communications between the Parties pertaining to the Services, whether written or oral.

The Agreement may not be modified unless such modifications are evidenced in writing signed by both the Parties.

The following documents are made an integral part of this Agreement and incorporated herein by this reference:

- A. RFP for Broker Services dated April 19, 2019, attached as Attachment A.
- B. Proposal of The Harry A. Koch Company dated May 8, 2019 attached as Attachment B.

ARTICLE 13 – ADDITIONAL COMPENSATION

City acknowledges that Broker may also be eligible to receive certain commissions and incentive compensation including contingency payments and bonuses as a result of being City's insurance broker (collectively, "Additional Compensations"). The Additional Compensations shall solely come from insurance companies, other intermediaries or other third parties and City shall not have any responsibility therefore. Except as otherwise provided in Article 14 of this Agreement, City consents and agrees to Broker's ability to receive such Additional Compensations, provided that all Additional Compensations directly attributable to City are fully disclosed by Broker on an annual basis at least thirty (30) days before the beginning of any term or renewal term to which the Additional Compensations relate.

ARTICLE 14 - COMMISSIONS

Broker shall use its best efforts to make all insurance placements on behalf of City on a net of commission basis. In the event any insurance carrier will not comply with this request, or it is not in City's best interest, any such commissions shall be disclosed to City and deducted from Broker's fees billed to City. City acknowledges and agrees that any contemplated commission deduction, premium credit request or return of commission to a carrier or City shall be done to accomplish and maintain the total agreed-upon compensation to Broker and is not an inducement to purchase or renew coverage through Broker.

ARTICLE 15 - COOPERATION

Broker shall be required to work in harmony with other consultants relative to providing information requested in a timely manner and in the specified form.

ARTICLE 16 – PERSONNEL / PRIMARY BROKER

Part of the consideration for this Agreement is the understanding that Jeff Scanlan shall be the broker primarily responsible for the services provided to City. Designation of Jeff Scanlan as the primary broker for City may be changed only with the prior written approval

of City of which shall not be unreasonably withheld. The departure of Jeff Scanlan from Broker may be considered a substantial failure by Broker to perform in accordance with the terms of this Agreement and may constitute cause for City's immediate termination of this Agreement. This Agreement is not exclusive and this provision does not preclude City from utilizing the services of any other broker or consultant for risk management or insurance service or advice during the term of this Agreement.

ARTICLE 17 – AUDIT

City shall be entitled to audit the books and records of Broker or any sub-consultant to the extent such book and records relate to the performance of this Agreement or any sub-contract to this Agreement.

Such books and records shall be maintained by Broker for a period of three (3) years from the date of the final payment under this Agreement and by sub-consultant for a period of three (3) years from the date of the final payment under the sub-contract unless a shorter period is otherwise authorized in writing.

ARTICLE 18 – MISCELLANEOUS

1. **Governing Law and Venue.** This Agreement is entered into, under and pursuant to, and is to be construed and enforceable solely in accordance with the laws of the State of Nebraska.

2. **Severability.** Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for any reason, such provision shall be null and void and severed from the Agreement. In such case, the other provisions shall be unaffected and shall continue to be valid and enforceable.

3. **Assignment.** Except as provided herein, the Parties hereto agree not to assign, sublet or transfer their interest in this Agreement without the written consent of the other and such consent shall not be unreasonably withheld. The Parties further agree that this Agreement binds the Parties, their successors, trustees, assignees and legal representatives.

4. **Titles and Subheadings.** Title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of this Agreement. Some terms are capitalized throughout this Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

5. **Notice.** Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

As to CITY:

City of La Vista
c/o City Administrator
8116 Park View Boulevard
La Vista, NE 68128
(402) 331-4343

As to BROKER:

The Harry A. Koch Company
c/o Jeff Scanlon
14010 FNB Parkway, Suite 300
Omaha, Nebraska 68154
(402) 861-7136

Notices shall be effective when received at the address specified above. Changes in the respective addresses to which such notice may be directed may be made from time to time by any Party by written notice to the other Party. Facsimile is acceptable notice effective when received, however, facsimiles received (i.e. printed) after 5:00 p.m. or on weekends or holidays, shall be deemed received on the next business day. The original of the notice also must be mailed as required herein.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Broker and City.

6. **Binding Authority.** Broker represents and warrants that the undersigned has authority to execute this Agreement and bind Broker to all terms and conditions therein.

[End of Agreement]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate the day and year first above written.

City:

CITY OF LA VISTA, NEBRASKA,
A Nebraska Municipal Corporation

Attest:

Pamela A. Suehe
Pam Buethe, City Clerk



Douglas Kindig, Mayor

BROKER:

By:

Its:

Pamela Suehe

Chief Operating Officer

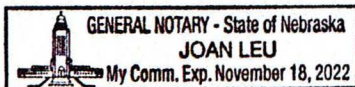
STATE OF NEBRASKA)

COUNTY OF Douglas)

)ss

On May 30, 2019 before me, Notary, personally appeared David G. Jesse personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity on behalf of The Harry A. Koch Company and that by his/her signature on the instrument executed the instrument.

WITNESS my hand and official seal.



Joan Leu
Notary Public