Independent Contractor Agreement
for
Professional Services

This Agreement shall be entered into between the City of Adel (the City), a municipal corporation organized and existing under Iowa law, and XXX an independent professional services contractor (Consultant), for the performance of Broker/Agent of Record for Insurance Services as outlined herein.

WITNESSETH:

WHEREAS, the City distributed a Request for Proposals seeking Broker/Agent of Record for Insurance Services; and

WHEREAS, in response to City's Request for Proposals, Consultant submitted a Proposal dated XXX, 2020 ("Proposal"); and

WHEREAS, the City's review panel evaluated all proposals received, and determined Consultant's to be the best overall proposal; and

WHEREAS, Consultant has experience and expertise with regard to these services and is interested in performing such services for and/or on behalf of the City; and

WHEREAS, Consultant and the City desire to enter into an Independent Contractor Agreement on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants herein contained, the parties hereto, agree as follows:

1. **SERVICES TO BE PERFORMED:** Consultant shall perform the following services for the City, and those other services as may be subsequently agreed to by mutual agreement of the parties:

A. Working with City management, analyze the insurance needs of the City and provide written recommendations for change where appropriate or dictated by changing exposures, market conditions and/or laws.

B. Organize renewal information and prepare insurance specifications.

C. Conduct a review of the City's Statement of Values ("SOV") and complete an on-site visit of the locations listed on the SOV on an annual basis.

D. Obtain coverage/policy documents from coverage providers and provide to the City in a timely manner.

E. Review all binders, coverage documents and endorsements to assure coverage is as intended. Verify accuracy of all coverage documents and invoices prior to delivery.

F. Maintain a summary of all coverage lines and endorsements. This should identify the type of coverage, coverage provider name, policy/coverage period, and a brief synopsis of the coverage features, limits, deductibles, and contributions/premiums. Summary listings must be updated as revisions/changes occur.

G. Oversee and coordinate all relevant services performed by coverage providers/underwriters or any related service agencies.

H. Place, cancel and otherwise handle, at the direction of and benefit of the City, all coverage placements, binders, policies, and endorsements in a timetable that avoids lapses in coverage.

I. Assist the City in submittal of claims to coverage provider(s). Interface with the provider when coverage issues arise.

J. Assign a representative to the City who will be responsible for communication with City officials and who, along with other representatives assigned, must be available to the City for consultation on insurance related issues and concerns.

K. Attend meetings related to the insurance program with City staff and other interested parties, as requested.

L. Review various insurance publications and provide the City with copies of articles and other items applicable to municipal insurance issues.

M. Provide the City with municipal market trends and news updates on a regular basis.

N. Coordinate (at a minimum) annual claims meeting(s) with City staff and a representative of the insurance provider.

O. Acts as a liaison between the City and coverage provider/carrier to resolve claims.

P. Advise the City, when requested, on coverage applicability to specific claims.

Q. Consult with the City regarding the proposed claims counsel the coverage provider plans to use with any claim.

R. Review loss runs quarterly, provide copies of the loss runs to the City and advise of any unanticipated problems.

S. Provide workers compensation claims support.

T. Provide safety and loss prevention services.

2. **DAYS AND TIMES OF SERVICE:** Consultant shall perform its services on days and times convenient to Consultant, unless and until the City notifies Consultant, whether verbally or in writing, of any limitations or requests on the specific day and time such services may or shall be performed. If the parties have already agreed to certain times/dates for services those dates are outlined here below:

N/A_____.

3. **INSTRUMENTATIONS:** Consultant shall be solely responsible for providing any instrumentations, equipment, supplies, vehicle, etc. necessary to accomplish the designated services listed in this Agreement, unless otherwise provided by the City.

4. **COMPENSATION AND TERMS OF PAYMENT:** The Consultant shall be compensated based on the commission percentage provided in the EMC policies and any other policies the City elects to purchase. Compensation is received directly from EMC and any other insurance carrier utilized. No other fees/commission shall be paid to the Consultant.

5. **REIMBURSEMENT OF EXPENSES:** Consultant shall be reimbursed for actual costs only of reimbursable expenses outlined below. The City will not be liable to Consultant for any expenses paid or incurred by Consultant unless otherwise agreed between the parties herein.

Expenses to be reimbursed by the City to Consultant are as follows: None.

6. **GENERAL COMPLIANCE:** In the conduct of the professional services contemplated hereunder, Consultant shall comply with applicable state, federal, and local law, rules, and regulations, technical standards, or specifications issued by the City and other governmental authorities with jurisdiction over the work. Consultant must qualify for and obtain any required licenses prior to commencement of work, including any professional licenses necessary to perform work within the State of Iowa.

7. **STANDARD OF CARE**: Services provided by Consultant under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

8. **PROPRIETARY RIGHTS AND CONFIDENTIAL INFORMATION:** Consultant agrees to hold in trust and confidence any confidential and proprietary information or data relating to the City and shall not disseminate or disclose such confidential information to any individual or entity, except the City's employees or subcontractors performing services hereunder (who shall be under a duty of confidentiality), and any other individuals specifically permitted in each instance by the City. Correspondingly, the City, to the extent permitted by law, agrees to hold in trust and confidence any confidential and proprietary information or data relating to Consultant and shall disseminate or disclose such confidential or proprietary information to any individual or entity, except as to the City's employees (who shall be under a duty of confidentiality), and any other individuals specifically permitted by Consultant.

9. **OWNERSHIP OF MATERIALS AND DELIVERABLES:** Consultant agrees that all materials, work product and other deliverables (the "Deliverables") to be produced or provided under this Agreement and all intellectual property rights in or related to the Deliverables shall become and remain the sole and exclusive property of the City. Consultant will be required to assign all right, title, and interest in and to all of the foregoing to the City. As owner of the Deliverables and related intellectual property rights, the City may: (i) obtain and hold copyrights, patents or such other registrations or intellectual property protections with respect to the Deliverables as may be desirable or appropriate, (ii) adapt, change, modify, edit, or use the Deliverables as the City sees fit, including in combination with the works of others, (iii) prepare derivative works based on the Deliverables and publish, display, and distribute any Deliverable(s) in any medium, and (iv) sell, license, sublicense, lease, or permit others to use the Deliverables and any intellectual property rights therein or related thereto, all without payment of any additional compensation to Consultant.

10. **INDEPENDENT CONTRACTOR RELATIONSHIP:** The parties intend that this Independent Contractor Agreement create an independent contractor relationship between them. The City is interested only in the end results achieved by the Services of Consultant and that they conform to the requirements specified in this Agreement. The manner of achieving those results and the right to exercise control or direction as to the details, means and method by which the Services are completed is the responsibility of Consultant. Consultant is not an agent or employee of the City for any purpose. Neither party shall be considered to be an agent, master or servant of the other party for any purpose whatsoever, and neither has any authority to enter into any contract, assume any obligations or make any warranties or representations on behalf of the other. Consultant accordingly waives any claim to any other payment or benefit of any kind, quantity or amount on account of performance, hereunder, except such payment as provided for in this Agreement. No workers' compensation insurance, or any other type of insurance (including, but not limited to, professional liability insurance) has been or will be obtained, by the City on account of Consultant. Consultant is responsible for all withholding taxes, social security, unemployment, workers compensation and other taxes and insurance and shall hold the City harmless for any claim for the same.

11. **PAYROLL OR EMPLOYMENT TAXES:** No payroll or employment taxes of any kind shall be withheld or paid with respect to payments to Consultant. The payroll or employment taxes that are subject to this paragraph include, but are not limited to, FICA (social security tax), FUTA (federal unemployment tax), federal income tax, state income tax and state unemployment insurance tax.

12. **INDEMNIFICATION:** Consultant shall indemnify and hold the City harmless from and against all liabilities, claims, debts, taxes, obligations, costs and expenses (including reasonable attorney's fees, court costs and costs of appeal) that the City may incur or sustain as a result of any breach of this Independent Contractor Agreement or negligent or other wrongful conduct in the performance of this Independent Contractor Agreement by Consultant. If a suit, action, arbitration or other proceeding is instituted by the City in connection with any controversy arising out of this Agreement or to interpret or enforce any rights under this Agreement, the City, as the prevailing party, shall be entitled to recover from the non-prevailing party all attorney fees, costs, expert witness fees, and litigation expenses incurred by the City, including those incurred on appeal.

13. **TERM:** This Agreement shall begin on January 1, 2021 and shall continue in effect until December 31, 2023, unless terminated by either party in accordance with Section 14. The Agreement may be renewed for three additional one-year periods by mutual agreement of both parties.

14. **TERMINATION:** This Agreement may be terminated by either party upon fourteen (14) days written notice, without penalty, should the other party fail to perform or otherwise breach its obligations under the Agreement. This Agreement may be terminated by either party, without cause and for its convenience upon one hundred twenty (120) days written notice to the other party. Additionally, this Agreement may be terminated at any time upon mutual written agreement of the parties. Upon termination of the Agreement, the City shall retain ownership in or will be granted possession or ownership of all Deliverables performed prior to the date of termination. Consultant agrees to work cooperatively with the City upon termination to ensure that all necessary ownership and possession is secured.

15. **INSURANCE:**

A. Consultant shall provide evidence of comprehensive general liability coverage and contractual liability insurance by an insurance company licensed to do business in the State of Iowa in the limits of at least $1,000,000 each personal injury accident and/or death; $2,000,000 general aggregate personal injury and/or death; and $1,000,000 for each property damage accident. The evidence shall designate the City as an additional insured, and that it cannot be canceled or materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested. Waiver of subrogation in favor of the City is required.

B. Consultant shall also provide evidence of automobile liability coverage in the limits of at least $1,000,000 bodily injury and property damage combined. The evidence shall designate the City as an additional insured, and that it cannot be cancelled or materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested. Waiver of subrogation in favor of the City is required.

C. Consultant shall provide evidence of professional liability insurance, by an insurance company licensed to do business in the State of Iowa, in the limit of $1,000,000 for claims arising out of the professional liability of Consultant. The insurance coverage shall not be reduced below these limits and Consultant will notify the City of any erosion of the Policy Limits due to claims made. Consultant shall provide the City written notice within five (5) days by registered mail, return receipt requested of the cancellation or material alteration of the professional liability policy.

D. AGENTS AND SUBCONTRACTORS. Consultant shall require that any of its independent contractors, agents and subcontractors who perform work and/or services pursuant to the provisions of this Agreement meet the same insurance requirements as are required of Consultant.

E. ADDITIONAL INSURED & GOVERNMENTAL IMMUNITY. Except for Workers Compensation and Professional Liability, the policies providing the coverage specified in A, B and C above shall include the City as Additional Insured and Governmental Immunities Endorsements.

F. Failure of Consultant to maintain any of the insurance coverages set forth above shall constitute a material breach of this Agreement.

16. **NOTICES:** All notices given under this Agreement shall be in writing, made by certified mail or personal delivery to the parties hereto, at the following addresses:

The City: **Consultant:**

City of Adel
301 S 10th Street
PO Box 248
Adel, IA 50003
PH: (515) 993-4525

The date of such notices will be deemed to be the date on which the notice is delivered, in the case of personal delivery, or the date on which the notice is delivered or attempted to be delivered as shown on the certified mail receipt, in the case of certified mail delivery.

17. **COMPLIANCE WITH LAWS:** Consultant agrees that during the term of this Agreement and as a condition of the City's duty to perform under the terms of this Agreement that Consultant will be in compliance with all applicable federal and state laws, rules and regulations and the policies of the City.

18. **ASSIGNMENT:** Consultant acknowledges that Consultant's services are unique and personal. Accordingly, Consultant may not assign Consultant's rights or delegate Consultant's duties or obligations under this Independent Contractor Agreement without the prior written consent of the City.

19. **WAIVER:** No waiver of the breach of any terms or conditions of this Agreement shall be valid unless in writing, nor shall any such waiver constitute a waiver of any other or succeeding breach of the same or other provisions of this Agreement.

20. **AMENDMENTS:** This Agreement may be supplemented, amended or revised only in writing by mutual agreement of the parties.

21. **HEADINGS:** The headings of this Agreement are inserted for convenience of reference only and in no way describe or limit the scope or intent of this Agreement or any of the provisions hereof.

22. **SEVERABILITY:** If any provisions of this Agreement are determined to be invalid by a court of competent jurisdiction, then such provisions shall be deemed null and void, but without invalidating the remaining provisions hereof.

23. **GOVERNING LAW:** This Independent Contractor Agreement shall be governed by and construed pursuant to the laws of the State of Iowa and any claim or dispute which may arise out of this Agreement shall be heard in a court of competent jurisdiction in Dallas County, Iowa, unless otherwise agreed by the parties.

24. **FORCE MAJEURE:** Notwithstanding anything contained in this Agreement to the contrary, neither party shall be liable to the other for failure to comply with any obligation under this Agreement, nor shall any charges or payments be made in respect thereof, if prevented from doing so by reason of a contingency beyond the reasonable control of the parties, and all requirements as to notice and other performance required hereunder within a specified period shall be automatically extended to accommodate the period of pendency of any such contingency which shall interfere with such performance.

25. **AGREEMENT:** This Agreement includes: (a) this document; (b) the City's Request for Proposal, dated XXX; and (c) the Consultant's Proposal dated XXX. The listed documents are to be interpreted so as to give effect to all terms of each and to harmonize their provisions. To the extent there are provisions in the listed documents that are irreconcilable, then the order of precedence is as listed in this section.

26. **COUNTERPARTS:** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same instrument.

This Agreement signed and dated this _____ day of _____, 2020.

Consultant

By:
_____

Title:_____

City of Adel

_____
James F. Peters, Mayor

Attest:

_____
City Clerk