



City of Grand Island

Tuesday, July 12, 2022

Council Session

Item I-1

#2022-160 - Approving Award of Proposal for General Governmental Insurance Services

Staff Contact: Patrick Brown

Council Agenda Memo

From: Patrick Brown, Finance Director

Meeting: July 12, 2022

Subject: Approving Award of General Governmental Insurance Services

Presenter(s): Patrick Brown, Finance Director

Background

Due to the change in the City's Municipal Code (27-12), it has been over 10 years since General Governmental Insurance Services has been open for bid. On March 11, 2022 the City issued a Request for Proposal (RFP) for General Governmental Insurance Services. The requested services included the following;

- Advise the City in matters relating to general governmental insurance and other products
- Provide advice on selecting, purchasing and administering a fiscally conservative insurance program
- Support for: plan design, annual renewals, plan utilization reviews, underwriting review, vendor service monitoring, merger and acquisitions, claim audits
- Provide advice on the marketplace including differences between insurers, market place trends and changes in legislation
- Manage expectations surrounding cost, service and deliverables from all parties involved
- Provide continuous support

The successful bidder would have access to the following insurance markets;

- Property and Casualty
- Contractor's Equipment
- Workers' Compensation
- Automobile
- General Liability
- Water Park General Liability
- Law Enforcement Liability
- Crime – Employee Dishonesty
- Linebacker Policy
- Excess markets
- Fiduciary Liability
- Cyber Liability

Discussion

Two (2) proposals were received and opened on April 7, 2022.

- Ryder Rosacker McCue & Huston of Grand Island, NE.
- FNIC of Grand Island, NE.

Proposals were evaluated and ranked based upon the following criteria;

Evaluation Criteria (phase one)

• Broker Qualifications and Experience	35
• Account Manager Qualifications and Experience	25
• Service Team Qualifications and Experience	25
• Proposed Service Fee	<u>15</u>
Total Points	100

Evaluation Criteria (phase two)

• Interview Presentation	25
• References	<u>25</u>
Total Points	50

The evaluation team consisted of the Finance Director, Interim City Attorney, Assistant Finance Director, and the Human Resource Director. The evaluation team chose FNIC for the services they could provide at a flat rate.

FNIC offered an annual service fee of \$71,500 and would be agreeable to keep that rate for 5 years. Any commissions FNIC would earn will be fully disclosed and credited against the fee amount.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Take no action.

Recommendation

Staff recommends Council consent to approving the award of the proposal to FNIC of Grand Island, NE.

Sample Motion

Move to approve the award of the proposal to FNIC of Grand Island, NE.



Stacy Nonhof, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

**REQUEST FOR PROPOSAL
FOR
GENERAL GOVERNMENTAL INSURANCE SERVICES**

RFP DUE DATE: April 7, 2022 at 4:00 p.m.
DEPARTMENT: Finance
PUBLICATION DATE: March 14, 2022
NO. POTENTIAL BIDDERS: 2

PROPOSALS RECEIVED

Ryder Rosacker McCue & Huston
Grand Island, NE

FNIC
Grand Island, NE

cc: Patrick Brown, Finance Director
Stacy Nonhof, Purchasing Agent

Jerry Janulewicz, City Administrator

P2368



PROPERTY & CASUALTY RISK MANAGEMENT CONSULTING FEE AGREEMENT

THIS RISK MANAGEMENT CONSULTING AGREEMENT (the “Agreement”) is entered into as of the 1st day of October, 2022 (the “Effective Date”) by and between First Insurance Group, LLC d/b/a FNIC (hereinafter referred to as “FNIC”), a Nebraska limited liability company, and The City of Grand Island, including all operations of the utilities department (hereinafter referred to as “Client”), a Nebraska corporation.

WHEREAS, Client wishes to obtain risk management and insurance consulting services; and

WHEREAS, FNIC is willing to provide said consulting services pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual promises and benefits stated herein, the parties agree as follows:

1. **Services.**
 - a. FNIC agrees to provide the services (“Services”) as set forth in Exhibit A, which is attached hereto and incorporated herein by this reference. FNIC shall perform all services under this agreement in accordance with established and recognized licensed insurance broker/consultant standards.
 - b. Client shall provide FNIC with timely access to appropriate information and individuals, including its outside advisors and consultants, as may be necessary for FNIC to perform the Services. FNIC shall not be responsible for any delay in its performance that results from the failure of Client, or any person acting on behalf of Client, to make available any information or individual in a timely manner.
2. **Compensation.** Client will pay FNIC the fees as set forth in Exhibit B, which is attached hereto and incorporated herein by this reference.
3. **Disclosure.** In addition to the fees retained by FNIC, in certain circumstances other parties may earn and retain usual and customary commissions and/or fees for their role in providing or placing insurance products or services under their separate contracts with insurers and/or reinsurers. As a common legal practice in the insurance industry, FNIC may enter into “contingency” agreements with certain insurance companies providing for compensation, in addition to fees or commissions, to be paid to FNIC based on several factors that are not client specific. Insurance coverage you may purchase through FNIC may be issued by an insurance carrier who has such an agreement with FNIC.
4. **Term.** This Agreement shall commence on the Effective Date and shall thereafter continue for a period of one (1) year. Thereafter this Agreement will automatically renew for successive terms of one (1) year each unless either party gives the other party written notice of termination at least ninety (90) days prior to the expiration date of the initial term or the renewal term then in effect.
5. **Non-Exclusivity.** This Agreement shall not be construed to prohibit FNIC from entering into agreement with third parties to offer similar services.

6. **Independent Contractors.** This Agreement does not constitute and will not be construed as constituting a partnership or joint venture, or an employee/employer relationship or one of principal and agent, it being understood that the parties are and will remain independent parties. FNIC shall at all times be an independent contractor to Client and no other relationships shall be created between the parties by virtue of this Agreement or any of the acts of the parties thereto. It is understood that the Client will not withhold any amounts for payment of taxes from the compensation of FNIC and that FNIC will be solely responsible to pay all applicable taxes from said payments, including payments owed to its employees and subagents.
7. **Implementation.**
- a. Client shall retain the right to determine whether to act on or implement the information, recommendations, and suggestions provided by FNIC, and the manner by which any such action or implementation shall be undertaken.
 - b. FNIC does not warrant that compliance with the recommendations made in connection with Services provided by FNIC will eliminate all risk of injury or property damage, or result in improved loss experience and FNIC assumes no responsibility for the management or control of the client's safety activities nor for the correction of the conditions pointed out in providing the services.
8. **Confidentiality.** Each party acknowledges that, in the course of this Agreement, it may have access to information and communications, including proprietary information claimed to be unique, secret, confidential, and which constitutes the exclusive property and trade secrets of the other party ("Confidential Information"). Each party agrees to maintain the confidentiality of the Confidential Information and to use the Confidential Information only to the extent necessary for legitimate business uses in connection with this Agreement. Upon request of either party or on termination or expiration of this Agreement, each party shall destroy or return the Confidential Information of the other party then in its possession. Nothing in this Agreement shall prohibit or limit either party's use of information which (a) is now, or hereafter becomes, publicly known or available through lawful means; (b) is rightfully in FNIC's or Client's possession, as evidenced by FNIC's or Client's records; (c) is disclosed to FNIC or Client without confidential or proprietary restriction by a third party who rightfully possesses and rightfully discloses the information; (d) is independently developed by FNIC or Client without any breach of this Agreement; (e) is the subject of a written permission to disclose provided by the disclosing party; (f) is required to be disclosed to regulators or affiliated or independent auditors or pursuant to court order or subpoena; or (g) is necessary to perform hereunder or to enforce this Agreement.
9. **Proprietary Interests.** FNIC shall retain the copyright and the sole right of ownership in the form and format of any report, tool, schedule, exhibit, assessment, analysis, or other deliverable, that is created or developed by FNIC in performing the Services and provided to Client by FNIC in any media whatsoever. Client shall, however, remain the owner of the content of any such deliverable and any Client data or information that was provided to FNIC for the performance of the Services. Any deliverable created by FNIC for Client shall be used for Client's internal purposes and shall not be used, without the written consent of FNIC, for Client's commercial gain, nor shall it be distributed to or shared by Client with any third person, except as may be necessary to accomplish the intent and purpose of this Agreement.
10. **Survival.** The rights and obligations of the parties in this Agreement that would by their nature or context be intended to survive the expiration or termination of this Agreement shall so survive.
11. **Modification; Waiver of Rights.** This Agreement may be modified, amended, or waived only by a written agreement executed by FNIC and Client. The course of dealing between FNIC and Client will not modify or amend this Agreement in any respect. Any delay by FNIC or Client in the exercise of any of their respective rights and obligations under this Agreement will not be construed as a waiver of any such rights or obligations to be performed. A waiver of a breach of any provision of this Agreement will not: (a) operate or be construed as a waiver of any subsequent breach; (b) limit or restrict any right or remedy

otherwise available; or (c) operate or be construed as a waiver of compliance as to any other provision of this Agreement.

12. **Authority to Bind.** Each of the parties for itself represents, warrants, and covenants to the other that:
- a. It has full power and authority to enter into this Agreement and to grant and convey to the other the rights set forth herein.
 - b. All necessary approvals for the execution, delivery, and performance of this Agreement have been obtained, and this Agreement has been duly executed and delivered and constitutes the legal and binding obligation of FNIC and Client, enforceable in accordance with its terms.
13. **Limitation of Liability.** Client's rights and remedies hereunder are exclusive and in lieu of all other rights and remedies. In no event will FNIC be liable to Client, any employee, agent or contractor of Client, or any third party for any claims arising out of or related to this Agreement, including, without limitation, the Services, which claims involve special, indirect, incidental, punitive, exemplary or consequential damages or lost profits, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise. Notwithstanding anything to the contrary in this Agreement and except for intentional misconduct or gross negligence, FNIC's liability to Client, whether arising in contract, tort (including, without limitation, negligence and strict liability) or otherwise, shall not exceed the lesser of the direct loss to Client or an amount equal to the fees paid to FNIC by Client with respect to the Services in question.
14. **No Third Party Beneficiaries.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against FNIC or Client. FNIC's Services under this Agreement are being performed solely for Client's benefit, and no other party or entity shall have any claim against FNIC because of this Agreement or the performance or nonperformance of Services hereunder.
15. **Assignment.** Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.
16. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
17. **Notices.** All notices provided for in this Agreement shall be in writing and shall be: (1) delivered personally; (2) made by certified or registered mail, return receipt requested and postage prepaid; (3) delivered by nationally recognized overnight courier, with all fees prepaid; or (4) or sent by email transmission. Notices shall be sent to the parties at the addresses set forth in the signature block below (or at such other address for a party as shall be specified by like notice; provided that notices of changes of address shall be effective only upon receipt thereof). Such notice will be effective: (i) as of the date delivered, if personally delivered (ii) if mailed, three (3) days after the date of posting; (iii) one day after deposit with any nationally recognized courier that provides proof of delivery sent with next day service; or (iv) if sent by email on the date of the transmission unless transmitted after normal business hours, in which case on the following date.
18. **Governing Law.** This Agreement shall be controlled pursuant to the laws of the State of Nebraska and any dispute arising from it shall be resolved in a court or administrative body of competent jurisdiction in the State of Nebraska. The parties consent to personal jurisdiction in such Nebraska forums.
19. **Force Majeure.** FNIC is hereby relieved of its obligations under this Agreement to the extent, but only to the extent, that its ability to perform its duties hereunder is impaired, delayed, or limited by circumstances beyond its control. This includes, but is not necessarily limited to, impairments, delays or limited ability to perform resulting from events such as tornadoes or major fire.

20. **Time is of the Essence.** All provisions in this Agreement involving payments and/or duties of the parties are hereby considered “of the essence” to this Agreement.
21. **Headings.** Paragraph headings in this Agreement are inserted solely for convenience and reference, and shall not in any way define, limit, extend or aid in the construction of the scope, extent or intent of this Agreement, nor shall headings have any bearing on the knowledge or understanding any party had regarding this Agreement.
22. **Entire Agreement; Severability.** This Agreement constitutes the entire Agreement between the parties with respect to all subject matter described herein and supersedes all prior negotiations and understandings, whether verbal or written. Each provision of this Agreement is severable from all others. If any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, the provision shall be deemed modified only to the extent necessary to render it valid and enforceable and all remaining provisions of this Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first set forth above.

**First Insurance Group, LLC
d/b/a FNIC**

14010 FNB Pkwy, Suite 300
Omaha, NE 68154
Fax: 402-861-7111

DocuSigned by:
By: Scott Hill
2DB78A13A0FD4D1...
Name: Scott Hill
Title: President

The City of Grand Island

100 East First Street
Box 1968
Grand Island, NE 68802

By: _____
Name: _____
Title: _____

By: _____
Name: Stacy R. Nonhof
Title: Interim City Attorney

EXHIBIT A**Property & Casualty Services**

FNIC shall utilize a systematic risk management approach to address exposures and the coverage design of client's program. Such services shall apply to the client's program inclusive of exposures to loss addressed by the following coverages:

General Liability	Waterpark Liability
Excess / Umbrella Liability	Auto Liability / Physical Damage
Property and Inland Marine	Employee Dishonesty
Contractor's Equipment	Cyber Liability
Public Officials Errors and Omissions	Workers Compensation
Employment Practices	Municipal Electric System Coverage
Law Enforcement Liability	

- 1. Upon consultation and approval by Client, FNIC will market and place coverage on the policies identified above.**
- 2. FNIC will provide annual executive summary recapping insurance renewal terms and summary of market conditions.**
- 3. FNIC shall assist the Client in developing Risk Management Objectives for the Client's insurance program.**
- 4. FNIC will analyze loss history, open claims and the experience modification factor of Client, reporting on findings and recommending changes to help alleviate losses and positively impact the Client's total cost of risk.**
- 5. FNIC will review and offer opinions on insurance and indemnifications language in construction, service, or vendor contracts as requested by Client.**
- 6. FNIC will make available to Client an on line risk management safety training and HR resources for Client use as needed in supplementing or developing client's current training or safety programs.**
- 7. FNIC shall conduct a Risk Analysis Checklist to identify exposures to loss, examine and recommend alternative techniques to control identified exposures, implement and monitor recommended techniques and isolate areas for continued improvement.**
- 8. The client shall have access to FNIC's loss control personnel for two (2) visits during the first twelve (12) months and then two (2) visits annually thereafter for the duration of this agreement.**
- 9. FNIC will perform for Client an appraisal on Client's buildings utilizing Marshall and Swift resources to assist Client in identifying a replacement cost value.**
- 10. FNIC will conduct with Client an annual account stewardship plan and shall keep Client informed of material events within the insurance industry that may have an impact on their current or future insurance programs.**

Should any policy of coverage for the above, or related, not be able to be issued without commission (as is the case with most Workers Compensation policies), FNIC will take the following steps: (1) accept the commission revenue; (2) report the revenue and details to the client; (3) apply a credit and issue a credit invoice to the client's account.

EXHIBIT B

Compensation

Client will pay FNIC the fees set forth below for the Services:

a) Risk Management and Consulting Services Broker Fees:

A total fee of \$71,500 is due and payable per payment plan indicated below. Contract will renew annually for the same fee, for a 5 year period, unless mutually agreed upon by the City of Grand Island and FNIC.

____ Full annual payment at inception

____ 10 equal monthly payments beginning at inception date of this agreement

X 4 equal quarterly payments beginning at inception date of this agreement

Selected payment plan will continue to apply to subsequent terms per Section 4 of this agreement.

b) Additional Fees:

- I. If the parties agree to add additional services not listed in Exhibit A of the Agreement, FNIC will receive additional compensation as agreed upon by the parties in writing.
- II. Upon prior written approval from client, if additional resources are necessary such work may be subcontracted to a qualified third party with expenses to be paid for by client.
- III. Compensation to FNIC for policies placed for lines of coverage not included in Exhibit A will be through standard commission schedules set by the insurance company.

RESOLUTION 2022-160

WHEREAS, on March 11, 2022 request for proposals were solicited to provide general governmental insurance services; and

WHEREAS, proposals were due April 7, 2022; and

WHEREAS, FNIC submitted a proposal in accordance with the terms of the Request for Proposals, such proposal being in the amount of \$71,500 for 2022-2023, with subsequent renewal options.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the proposal by FNIC of \$71,500 to provide general governmental insurance services to the City for fiscal year 2022-2023 with renewal options, is hereby approved as the best evaluated proposal submitted for that purpose.

BE IT FURTHER RESOLVED, that the mayor is hereby authorized and directed to execute such agreements on behalf of the City Of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, July 12, 2022

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☒ _____
July 11, 2022	☒ City Attorney