

**CITY OF PORTLAND
AGREEMENT FOR PROFESSIONAL, TECHNICAL, OR EXPERT SERVICES**

CONTRACT NUMBER _____

**TITLE OF WORK PROJECT:
Insurance Brokerage Services for Owner Controlled Insurance Program (OCIP) Phase V**

This contract is between the City of Portland ("City," or "Bureau") and Marsh USA Inc., hereafter called Consultant. The City's Project Manager for this contract is Mike Reiner.

Effective Date and Duration

This contract shall become effective upon execution by all parties. This contract shall expire, unless otherwise terminated or extended, on August 31, 2020. This contract may be extended by written agreement of the parties through August 31, 2021, if necessary, for project closeout.

Consideration

- (a) City agrees to pay Consultant a sum not to exceed \$625,000 for accomplishment of the work, per the annual budgets set forth in the STATEMENT OF WORK AND PAYMENT SCHEDULE.
- (b) Interim payments shall be made to Consultant according to the schedule identified in the STATEMENT OF THE WORK AND PAYMENT SCHEDULE.

CONSULTANT DATA AND CERTIFICATION

Name (print full legal name): _____ Marsh USA Inc.

Address: _____ 111 SW Columbia St., Suite 500, Portland, OR 97201

Employer Identification Number (EIN): _____ 93-1436000

[INDEPENDENT CONTRACTORS: DO NOT PROVIDE SOCIAL SECURITY NUMBER (SSN) – LEAVE BLANK IF NO EIN]

City of Portland Business Tax Registration Number: _____ 355846

Citizenship: Nonresident alien ☐ Yes ☒ No

Business Designation (check one): ☐ Individual ☐ Sole Proprietorship ☐ Partnership ☒ Corporation

☐ Limited Liability Co (LLC) ☐ Estate/Trust ☐ Public Service Corp. ☐ Government/Nonprofit

Payment information will be reported to the IRS under the name and taxpayer I.D. number provided above. Information must be provided prior to contract approval.

TERMS AND CONDITIONS

1. Standard of Care

Consultant shall perform all services under this contract using that care, skill, and diligence that would ordinarily be used by similar professionals in this community in similar circumstances.

2. Effect of Expiration

Passage of the contract expiration date shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any default or defect in performance that has not been corrected.

3. Order of Precedence

This contract consists of these Terms and Conditions, the Statement of Work and Payment Schedule, and any exhibits that are attached. Any apparent or alleged conflict between these items will be resolved by using the following order of precedence: a) these Terms and Conditions; b) Statement of Work and Payment Schedule; and c) any exhibits attached to the contract.

4. Early Termination of Contract

- (a) The City may terminate this Contract for convenience at any time for any reason deemed appropriate in its sole discretion. Termination is effective immediately upon notice of termination given by the City.
- (b) Consultant may terminate this Contract for convenience upon ninety (90) days' notice to the City for any reason deemed appropriate in its sole discretion. Termination is effective immediately upon notice of termination given by Consultant.

- (c) Either party may terminate this Contract in the event of a material breach by the other party that is not cured. Before termination is permitted, the party seeking termination shall give the other party written notice of the breach, its intent to terminate, and fifteen (15) calendar days to cure the breach. If the breach is not cured within 15 days, the party seeking termination may terminate immediately by giving written notice that the Contract is terminated.
- (d) In the event of termination of the Contract for any reason, Consultant and its affiliates shall have no further obligation to provide services to the City.

5. Remedies and Payment on Early Termination

- (a) If the City terminates pursuant to 4(a) above, the City shall pay the Consultant for work performed in accordance with the Contract prior to the termination date. No other costs or loss of anticipated profits shall be paid.
- (b) If the City terminates pursuant to 4(b) above, the City is entitled all remedies available at law or equity. In addition, Consultant shall pay the City all damages, costs, and sums incurred by the City as a result of the breach.
- (c) If the Consultant justifiably terminates the contract pursuant to subsection 4(b), the Consultant's only remedy is payment for work prior to the termination. No other costs or loss of anticipated profits shall be paid.
- (d) If the City's termination under Section 4(b) was wrongful, the termination shall be automatically converted to one for convenience and the Consultant shall be paid as if the Contract was terminated under Section 4(a).
- (e) In the event of early termination the Consultant's work product before the date of termination becomes property of the City subject to Section 10 below.

6. Assignment

Consultant shall not subcontract, assign, or transfer any of the work scheduled under this Agreement, without the prior written consent of the City. Notwithstanding City approval of a subconsultant, the Consultant shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Consultant hereunder. The Consultant agrees that if subconsultants are employed in the performance of this Agreement, the Consultant and its subconsultants are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

7. Compliance with Applicable Law

Consultant shall comply with all applicable federal, state, and local laws and regulations. Consultant agrees it currently is in compliance with all tax laws. Consultant shall comply with Title VI of the Civil Rights Act of 1964 and its corresponding regulations as further described at: <http://www.portlandoregon.gov/bibs/article/446806>. In connection with its activities under this Contract, Consultant shall comply with all applicable Grant Terms and Conditions. This includes all terms and conditions contained in this Contract and, for a contract involving a grant, the Grant Terms and Conditions as further described at: <http://www.portlandoregon.gov/bibs/article/455735>.

8. Indemnification for Property Damage and Personal Injury

Consultant shall indemnify, defend, and hold harmless the City, its officers, agents, and employees, from all claims, losses, damages, and costs (including reasonable attorney fees) for personal injury and property damage arising out of the willful misconduct or negligent acts or omissions of the Consultant, its Subconsultants, employees or agents in the performance of its services. Nothing in this paragraph requires the Consultant or its insurer to indemnify the City for claims of personal injury or property damage caused by the negligence of the City. This duty shall survive the expiration or termination of this contract.

9. Insurance

Consultant shall obtain and maintain in full force at Consultant expense, throughout the duration of the Contract and any warranty or extension periods, the required insurance identified below. The City reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on Oregon cities during the term of the Contract.

- (a) Workers' compensation insurance as required by ORS Chapter 656 and as it may be amended. Unless exempt under ORS Chapter 656, the Consultant and all subconsultants shall maintain coverage for all subject workers.

☒ Required and attached // ☐ Proof of exemption (i.e., completion of Workers' Compensation Insurance Statement)

- (b) General commercial liability (CGL) insurance covering bodily injury, personal injury, property damage, including coverage for independent contractor's protection (required if any work will be subcontracted), premises/operations, contractual liability, products and completed operations, in per occurrence limit of not less than \$1,000,000, and aggregate limit of not less than \$2,000,000.

☒ Required and attached // ☐ Waived by Bureau Director or designee // ☐ Reduced by Bureau Director or designee

- (c) Automobile liability insurance with coverage of not less than \$1,000,000 each accident, and an umbrella or excess liability coverage of \$2,000,000. The insurance shall include coverage for any auto or all owned, scheduled, hired and non-owned auto. This coverage may be combined with the commercial general liability insurance policy.

☒ Required and attached // ☐ Waived by Bureau Director or designee // ☐ Reduced by Bureau Director or design

- (d) Professional Liability and/or Errors & Omissions insurance to cover damages caused by negligent acts, errors or omissions related to the professional services, and performance of duties and responsibilities of the Consultant under this contract in an amount with a combined single limit of not less than \$1,000,000 per occurrence and aggregate of \$3,000,000 for all claims

per occurrence. In lieu of an occurrence based policy, Consultant may have claims-made policy in an amount not less than \$1,000,000 per claim and \$3,000,000 annual aggregate, if the Consultant obtains an extended reporting period or tail coverage for not less than three (3) years following the termination or expiration of the Contract.

☒ Required and attached // ☐ Waived by Bureau Director or designee // ☐ Reduced by Bureau Director or designee

Continuous Coverage; Notice of Cancellation: The Consultant agrees to maintain continuous, uninterrupted coverage for the duration of the Contract. There shall be no termination, cancellation, material change, potential exhaustion of aggregate limits or non-renewal of coverage without thirty (30) days written notice from Consultant to the City. If the insurance is canceled or terminated prior to completion of the Contract, Consultant shall immediately notify the City and provide a new policy with the same terms. Any failure to comply with this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract.

Additional Insured: The liability insurance coverages, except Professional Liability, Errors and Omissions, or Workers' Compensation, shall be without prejudice to coverage otherwise existing, and shall name the City of Portland and its bureaus/divisions, officers, agents and employees as Additional Insureds, with respect to the Consultant's activities to be performed, or products or services to be provided. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

Certificate(s) of Insurance: Consultant shall provide proof of insurance through acceptable certificate(s) of insurance, including additional insured endorsement form(s) and all other relevant endorsements, to the City prior to the award of the Contract if required by the procurement documents (e.g., request for proposal), or at execution of Contract and prior to any commencement of work or delivery of goods or services under the Contract. The Certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). Insurance coverages required under this Contract shall be obtained from insurance companies acceptable to the City of Portland. The Consultant shall pay for all deductibles and premium. The City reserves the right to require, at any time, complete, certified copies of required insurance policies, including endorsements evidencing the coverage the required.

Subconsultant(s): Consultant shall provide evidence that any subconsultant, if any, performing work or providing goods or service under the Contract has the same types and amounts of coverages as required herein or that the subconsultant is included under Consultant's policy.

10. Ownership of Work Product

Work prepared exclusively and specifically for the City by Consultant in connection with the services shall become the exclusive property of the City. Consultant retains all of its rights in its intellectual property (including methodologies, ideas, know-how, techniques, models, tools, skills, knowledge and experience and any graphic representations of any of these) used by it generally or provided generally to City's or possessed by it prior to, or developed or acquired by it, during performance of services for the City and shall not be restricted in any matter thereto. Consultant shall acquire no rights of ownership subsisting in any material provided by the City to Consultant. Except those prepared exclusively and specifically for the City, all other documents, materials, and computer software used by or developed by or for Consultant shall be deemed proprietary to Consultant and remain the sole property of Consultant. The City shall not, during the term of this Contract or at any time thereafter, disclose to any third party any work product of Consultant, except to (i) its insurers, (ii) as required by law or (iii) as expressly permitted by this Contract.

11. EEO Certification

In the event Consultant provides in excess of \$2,500.00 for services to the City in any fiscal year, Consultant shall obtain EEO certification from the City.

12. Equal Benefits

Consultant must comply with the City's Equal Benefits program as prescribed by Chapter 3.100 of the Code of the City of Portland. The required documentation must be filed with Procurement Services, City of Portland, prior to contract execution.

13. Successors in Interest

The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns.

14. Severability

It is the intent of the parties that the provisions of this Contract shall be enforced to the fullest extent permitted by applicable law. To the extent that the terms set forth in this Contract or any word, phrase, clause or sentence is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified or deleted in such manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making this Contract, as modified, enforceable, and the balance of this Contract shall not be affected thereby, the balance being construed as severable and independent.

15. Waiver

The failure of the City to enforce any provision of this Contract shall not constitute a waiver by the City of that or any other provision.

16. Errors

The Consultant shall promptly perform such additional services as may be necessary to correct errors in the services required by this contract without undue delays and without additional cost.

17. Governing Law/Venue

The provisions of this contract shall be interpreted, construed and enforced in accordance with, and governed by, the laws of the State of Oregon without reference to its conflict of laws provisions that might otherwise require the application of the law of any other jurisdiction. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Multnomah County Oregon.

18. Amendments

All changes to this contract, including changes to the scope of work and contract amount, must be made by written amendment and approved by the Chief Procurement Officer to be valid. Any amendment that increases the original contract amount by more than 25% must be approved by the City Council to be valid.

19. Business Tax Registration

The Consultant shall obtain a City of Portland business tax registration number as required by PCC 7.02 prior to beginning work under this Contract.

20. Prohibited Conduct

The Consultant's Portland office shall not hire any City employee who evaluated the proposals or authorized the award of this Contract for two years after the date the contract was authorized without the express written permission of the City and provided the hiring is permitted by state law.

21. Payment to Vendors and Subconsultants

The Consultant shall timely pay all subconsultants and suppliers providing services or goods for this Contract.

22. Access to Records

The Consultant shall maintain all records relating to this Contract for three (3) years after final payment. The City may examine, audit and copy the Consultant's books, documents, papers, and records relating to this contract at any time during this period upon reasonable notice. Copies of these records shall be made available upon request. Payment for the reasonable cost of requested copies shall be made by the City.

23. Audits

- (a) The City may conduct financial and performance audits of the billings and services specified in this agreement at any time in the course of the agreement and during the three (3) year period established by paragraph 22. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States Government Accountability Office.
- (b) If an audit discloses that payments to the Consultant exceed the amount to which the Consultant was entitled, the Consultant shall repay the amount of the excess to the City.
- (c) Any audit or access to records under Section 22 or this Section of the Contract shall be upon reasonable advance notice, during ordinary business hours and subject to, and limited by, reasonable and appropriate confidentiality obligations and reasonable scope limitations which may be required to protect the confidential and proprietary nature of Consultant's operations and the shared nature of systems which may be used to provide the services. Any such audit or access to records shall be limited to documents directly and specifically related to the services performed.

24. Electronic Signatures

The City and Consultant may conduct this transaction, including any contract amendments, by electronic means, including the use of electronic signatures.

25. Merger Clause

This Contract encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether verbal or written.

26. Dispute Resolution/Work regardless of disputes

The parties shall participate in mediation to resolve disputes before conducting litigation. The mediation shall occur at a reasonable time after the conclusion of the Contract with a mediator jointly selected by the parties. Notwithstanding any dispute under this Contract, the Consultant shall continue to perform its work pending resolution of a dispute, and the City shall make payments as required by the Contract for undisputed portions of the work. In the event of litigation no attorney fees are recoverable. No different dispute resolution paragraph(s) in this contract or any attachment hereto shall supersede or take precedence over this provision.

27. Progress Reports: ☐ Applicable ☒ Not Applicable

If applicable, the Consultant shall provide monthly progress reports to the Project Manager as described in the Statement of the Work and Payment Schedule.

28. Consultant's Personnel: ☒ Applicable ☐ Not Applicable

If applicable, the Consultant shall assign the key personnel listed in the Statement of the Work and Payment Schedule for the work required by the Contract and shall not change key personnel without the prior written consent of the City, which shall not be unreasonably withheld. Notwithstanding the foregoing, the Consultant shall be permitted to replace its key personnel assigned to the services without the City's prior consent in the event such personnel resigns from or is terminated by the Consultant or is assigned to a different role by the Consultant. In such an event, the Consultant shall notify the City of the personnel change as soon as possible and discuss the qualifications of the replacement personnel with the City. Any change to the key personnel listed in the Statement of Work shall be documented by written amendment to the Contract.

29. Subconsultants

The Consultant shall use the subconsultants identified in its proposals. The Consultant shall not change subconsultant assignments without the prior written consent of the Chief Procurement Officer. The City will enforce all social equity contracting and Minority, Women and Emerging Small Business (M/W/ESB) subcontracting commitments submitted by the Consultant in its proposals. Failure to use the identified M/W/ESB subconsultants without prior written consent is a material breach of contract.

For contracts valued \$50,000 or more, the Consultant shall submit a Monthly Subconsultant Payment and Utilization Report (MUR), made part of this contract by reference, reporting ALL subconsultants employed in the performance of this agreement.

30. Third Party Beneficiaries

There are no third party beneficiaries to this contract. Enforcement of this contract is reserved to the parties.

31. Conflict of Interest

Consultant hereby certifies that, if applicable, its contract proposal is made in good faith without fraud, collusion or connection of any kind with any other proposer of the same request for proposals or other City procurement solicitation(s), that the Consultant as a proposer has competed solely on its own behalf without connection or obligation to any undisclosed person or firm. Consultant certifies that it is not a City official/employee or a business with which a City official/employee is associated, and that to the best of its knowledge, Consultant, its employee(s), its officer(s) or its director(s) is not a City official/employee or a relative of any City official/employee who: i) has responsibility in making decisions or ability to influence decision-making on the contract or project to which this contract pertains; ii) has or will participate in evaluation or management of the contract; or iii) has or will have financial benefits in the contract. Consultant understands that should it elect to employ any former City official/employee during the term of the contract then that former City official/Consultant employee must comply with applicable government ethics and conflicts of interest provisions in ORS Chapter 244, including but not limited to ORS 244.040(5) and ORS 244.047, and the City's Charter, Codes and administrative rules, including lobbying prohibitions under Portland City Code Section 2.12.080.

32. Limitation of Liability, Disclaimers, and Additional Provisions

- (a) In no event shall either party to this Contract be liable for any indirect, special, incidental, consequential or punitive damages or for any lost profits arising out of or relating to any services provided by Consultant or its affiliates. The aggregate liability of Consultant, its affiliates and its and their employees to City or City affiliates arising out of or relating to the provision of services by Consultant or its affiliates or subcontractors shall not exceed \$3,000,000. This provision applies to the fullest extent permitted by applicable law, and to all causes of action, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, misrepresentation and other torts, but not including death or bodily injury.
- (b) The City agrees that all decisions regarding the amount, type or terms of coverage shall be the City's ultimate responsibility. While Consultant may provide advice and recommendations, City must decide the specific coverage that is appropriate for the City's particular circumstances and financial position.
- (c) Consultant will not take any action to replace the City's insurers unless the City instructs Consultant to do so. Consultant's service obligations to the City are solely contractual in nature. The City acknowledges that, in performing services, Consultant and its affiliates are not acting as a fiduciary for the City, except to the extent required by applicable law, and do not have a fiduciary or other enhanced duty to the City. Any reports or advice provided by Consultant should not be relied upon as accounting, legal, regulatory or tax advice. In all instances, Consultant recommends that the City seeks its own advice on such matters from professional accounting, legal, regulatory and tax advisors.
- (d) If Consultant has taken over any existing program or policies implemented by another broker, Consultant will not assume any responsibility for the adequacy or effectiveness of those programs or policies or any acts or omissions occurring prior to Consultant's engagement. Within a reasonable time, Consultant will have completed a review of such programs and policies and will make recommendations it believes are necessary.
- (e) Consultant may provide to the City information and services related to insurance regulatory and insurance tax issues relating to the City's insurance program. Any reports or advice provided by Consultant will be based on publicly available information and Consultant's experience as an insurance broker and risk consultant in dealing with such matters for other clients and should not be relied upon as accounting, regulatory or tax advice. In all instances, Consultant recommends that the City seek its own advice on accounting, regulatory and tax matters from professional legal and tax advisers.
- (f) Consultant may provide the City with modeling and/or business analytics services, including Loss Projection Model (LPM), Workers' Compensation Performance Assessment (WCPA), IDEAL, Risk Bearing Capacity and risk tolerance analysis (RBC), benchmarking and industry risk mapping ("Modeling and Analytics"). Modeling and Analytics services will be based upon a number of assumptions, conditions and factors. If any of them or any information provided to Consultant are inaccurate or incomplete or should change, the Modeling and Analytics provided by Consultant could be materially affected. These services are subject to inherent uncertainty, and actual results may differ materially from that projected by Consultant. They are provided solely for the City's benefit, and do not constitute, and are not intended to be a substitute for, actuarial, accounting or legal advice. Consultant shall have no liability to any third party in connection with these services or to the City with regard to any services performed or provided by a third party. Except to the City's insurers in connection with

the placement of coverage by Consultant, the City shall not share any of Consultant's Modeling and Analytics work product with a third party without Consultant's prior written consent or as required by law.

- (g) The parties are of equal commercial sophistication and have negotiated this Contract at arms' length. Each party is entering into this Contract voluntarily, has read and understands all its provisions and has had the opportunity to seek and to obtain the advice of counsel on its rights and responsibilities under, and the terms and conditions of, this Contract.

STATEMENT OF THE WORK AND PAYMENT SCHEDULE

SCOPE OF WORK

A. Insurance Brokerage Services

1. Design, market and implement the broad insurance program at a reasonable cost that adequately protects BES, Water Bureau and all other parties designated by the City against the potential risks arising out of the projects.
2. Act as BES's and Water Bureau's Agent in all negotiations with insurers, underwriters, insurance regulatory authorities and other parties with regard to BES's and Water Bureau's OCIP.
3. Procure required insurance policies, including workers' compensation and employer's liability, commercial general liability, builders' risk, pollution liability and, excess liability, to cover the risks/exposures of BES' capital improvement projects and Water Bureau Washington Park Reservoir Project. Any additional lines of insurance purchased by BES and/or Water Bureau through Consultant will be addressed via addendum to this Agreement prior to the purchase of such additional insurance.
4. Consultant shall be authorized for purposes of this Agreement to represent and assist the City in all discussions and transactions with all insurers, provided that the Consultant shall not place any insurance on behalf of the City unless so authorized by the City.
5. Placements made in connection with the Program may require the payment of surplus lines taxes and/or fees to state regulators, boards or associations, which the City agrees to pay. Such taxes will be identified on invoices covering these placements.
6. Consultant does not speak for any insurer, is not bound to utilize any particular insurer, and does not have the authority to make binding commitments on behalf of any insurer.
7. Consultant does not guarantee or make any representation or warranty that insurance can be placed on terms acceptable to the City.
8. Consultant shall assist with documentation and other steps to obtain commitments for and implement the City's insurance program upon the City's instructions, it being understood that Consultant will not independently verify or authenticate City-provided information necessary to prepare underwriting submissions and other documents relied upon by insurers, and the City shall be solely responsible for the accuracy and completeness of such information and other documents furnished to Consultant and/or insurers and shall sign any application for insurance. The City understands that the failure to provide all necessary information to an insurer, whether intentional or by error, could result in the impairment or voiding of coverage.
9. Upon the City's prior consent, Consultant may utilize the services of other intermediaries to assist in the marketing of the City's insurance (including brokers in the London and other markets), when in Consultant's professional judgment those services are necessary or appropriate. Such intermediaries may be affiliates of Consultant or not related to Consultant. The compensation of such intermediaries is not included in Consultant's compensation under this Agreement and will be paid by insurers out of paid premiums.
10. Verify the wording and accuracy of each policy, binder, certificate, endorsement or other document received from insurers and use best efforts to obtain revisions in such documents when needed.
11. Verify the accuracy of all rates and premiums charged.
12. Verify the accuracy of all audits.
13. Promptly submit two originals of all policies and endorsements to BES and Water Bureau; including a summary for each line of coverage.

14. Keep current on exposure changes and negotiate amendments to the policies as requested.
15. Request modifications to coverage from underwriters as required. Monitor changes requested by BES and Water Bureau.
16. Be available to answer questions from BES, Water Bureau and its consultants and contractors.
17. Use best efforts to obtain answers from underwriters to policy coverage questions.
18. Attend meetings with BES, Water Bureau, consultants and contractors as requested.
19. Prepare an agenda and conduct a monthly or quarterly OCIP review meeting at BES, take and distribute the meeting minutes.
20. Prepare insurance certificates and endorsements on policies placed by Consultant as requested by BES and Water Bureau.
21. Issue insurance certificates and endorsements to appropriate parties.
22. Monitor published financial information of BES and Water Bureau current insurers and alert the City when their status falls below Consultant's minimum guidelines. The Consultant will not be responsible for the solvency or ability to pay claims of any insurance carrier.
23. Review insurance policies annually with BES to take into account changes in insurance market conditions and to recommend appropriate changes.

B. Claims Management Services

1. Assist in the development of a well-coordinated claims program between the broker, insurers, BES, Water Bureau and the contractors of all tiers.
2. When requested, present general liability claims to insurer/underwriters for first dollar insurance or excess insurance.
3. Monitor all claims activity on all lines of coverage and provide quarterly reports separated between BES and Water Bureau.
4. Provide recommendations for cost containment, structured settlements and other areas to reduce claims costs.
5. Assist BES and Water Bureau in adjustment and settlement of claims and losses.
6. Coordinate claims data with the insurance company and monitor for accuracy.
7. Advise BES and Water Bureau on coverage application to specific claims.
8. Deleted
9. Assist BES and Water Bureau in coordinating claims where existing City insurance programs (i.e., City's self-insured fund) dovetail with the OCIP.
10. Arrange with insurance carriers the means for BES and Water Bureau to be on-line with read only capability of their RMIS.
11. Unless the City gives the Consultant client executive contrary instructions in writing, whenever the Consultant client executive is informed in writing by the City that a claim has been notified to the primary carrier Consultant will notify all applicable excess carriers where Consultant has placed the applicable excess policies or the Consultant client executive has been provided written notice by the City of the applicable carrier and policies. If Consultant is instructed not to provide notice to any excess carrier, Consultant shall have no responsibility for any consequences arising out of the failure to give notice.

C. OCIP Administrative Services

1. By May 1st of each contract period, submit a written report detailing:
 - Insurance program earned premiums and incurred losses by year and by coverage line.
 - Anticipated issues, regarding insurance renewal terms and conditions and other indications of market conditions, trends and changes.

- Identified problems in claims, uninsured risks, etc.
 - Services performed, planned and recommendations for improved program design.
 - An account of all income received on BES' and Water Bureau account.
 - Issues related to coordination of OCIP with BES' existing insurance program.
 - Other OCIP related issues.
2. Prepare a work plan to establish activities, milestones, deliverables, staffing, billing rates and intervals and other matters as required in the Broker Services Contract.
 3. Review and analyze bid specifications for all necessary OCIP provisions, identify project loss exposures and recommend appropriate measures for treating each identified loss exposure.
 4. Review and comment on insurer safety & loss control activities and recommendations.
 5. Assist the City in estimating the insurance cost deducted from the construction contractor's cost proposal.
 6. Ensure timely and accurate reporting of contractor payroll as required.
 7. Perform insurance deduct audits as required by BES and Water Bureau.
 8. Audit and maintain the OCIP Enrollment, Insurance and Claims Manual.
 9. Assist with enrollment and administration of contractors by tier and segment for each capital improvement project and process and file all necessary documentation.
 10. Provide OCIP orientation training to City personnel that are directly or indirectly involved in the administration of the OCIP and to contractors bidding BES and Water Bureau Washington Park Reservoir Project work as is necessary.

D. Risk, Safety & Loss Prevention Services

1. Assist with the continued development, implementation and maintenance of the master construction safety and loss prevention program to involve all appropriate entities (BES, Water Bureau contractors of all tiers, etc.).
2. Provide access to risk control services including periodic exposure identification, risk evaluation and controls.
3. Review and recommend changes to safety language for bid specifications and contract language as requested.
4. Assist with safety submittal reviews, as requested.
5. Develop, implement and institute training programs as requested.
6. Assist BES and Water Bureau in the design of a construction safety incentive program, as requested. Develop and secure an Incentive & Safety Sponsorship Account.
7. Assist BES and Water Bureau with management oversight of insurance carrier safety & loss prevention personnel.

Any loss control consulting activities and/or surveys performed by Consultant under this Agreement are advisory in nature and for the sole purpose of assisting City in monitoring contractor compliance with the Project's safety standards in conjunction with the Project's insurance needs. Such services are limited in scope, do not claim to find or include every loss potential, hazard, statutory or code violation or violation of good practice, and do not constitute a safety inspection as provided by a safety engineering service. All surveys and reports are based upon conditions observed and information supplied by City during Consultant's visit. Consultant does not expressly or impliedly guarantee, assure or warrant in any way the safety of the Project site or any Project participant or that City, the Project or any Project participant is in compliance with federal, state and local laws, codes, statutes, ordinances and recommendations.

E. Risk Management Information System Services

1. In concert with BES, determine the risk management information systems (RMIS) needs of the OCIP.
2. Provide access to a risk management information system that adequately and accurately interfaces with the

systems of the OCIP insurers, the broker, BES and Water Bureau.

3. Provide access and technical support to the RMIS from City terminals.
4. Prepare RMIS quarterly and annual reports that keep BES informed of the status of the OCIP. Reports must summarize problems, progress, accomplishments, current and planned activities, claims, deductibles, enrollments, certificate collection and other pertinent information.
5. Maintain contractor tracking logs that include:
 - Alphabetical listings of all contractors, including names, addresses and telephone numbers.
 - Lists of all contractors and subcontractors by tiers of relationships with a sub list indicating current active contractors.
 - Contract award dates, inception dates and completion dates.
 - Contractor insurance policy data, including the policy number, term, limits, insurer and coverage provided.
 - Underwriting data including experience modification, estimated contract and payroll data, labor classifications, rates and contractor cost.
 - A policy form information tracking system to track receipt and transmittal of the policy forms of all contractors and insurance companies.
 - Monthly payroll reporting.
 - Monthly exception reporting to identify contractors not in compliance with RMIS requirements, and the areas of noncompliance.
 - Confirm that the RMIS can accurately import the OCIP insurer's claims and policy data.
 - Confirm that the RMIS data belongs to BES in case there are future changes in systems or vendors.
6. Hard copies of information generated from C-Smart or MWrap are the property of BES. However, Consultant retains ownership of all proprietary software and data that is input or used on such proprietary software systems.

WORK PERFORMED BY CITY

BES's Risk Services Manager will oversee the Consultant's work and provide support as needed. Specific duties the City will perform include:

- Bid specification reviews
- Contract reviews
- Safety and loss prevention (1 full-time Construction Safety Manager and 1 full-time Construction Risk Specialist)
- Project risk audits

BES staff will provide the Consultant with all BES/PWB documentation necessary to perform requested services.

CONSULTANT KEY PERSONNEL

The Consultant shall assign the following personnel to do the work in the capacities designated:

NAME	ROLE ON PROJECT
Raymond Schneider	Client Executive
Theresa Carey-Brill	Program Manager
Ann Anderson	Senior Program Manager

SUBCONSULTANTS

The Consultant shall assign the following subconsultants to perform work in the capacities designated:

NAME	ROLE ON PROJECT	SUBCONTRACT AMOUNT
National Insurance Consultants, Inc., dba Transportation Management Services	Risk Management / Safety & Loss Prevention Advisory	\$57,420

The subconsultant amount shown above includes \$57,420 for subcontracting to M/W/ESB certified firms, representing M/W/ESB participation of 9.2%.

The City will enforce all social equity contracting and Minority, Women and Emerging Small Business (M/W/ESB) subcontracting commitments submitted by the Consultant in its Proposal. For contracts valued \$50,000 or more, the Consultant shall submit a Monthly Subconsultant Payment and Utilization Report (MUR), made part of this contract by reference, reporting ALL subconsultants employed in the performance of this contract. An electronic copy of the MUR may be obtained at: <http://www.portlandoregon.gov/bibs/45475>.

COMPENSATION

- Consultant will be paid in accordance with the annual amounts identified in the Program Budget below. The budget will be reviewed and adjusted, if necessary, on an annual basis.
- Consultant shall invoice the City in four equal quarterly installments. Installment dates are as follows: December 1, March 1, June 1, and September 1. With respect to insurance placed by the Consultant on the City's behalf, the Consultant shall disclose any commissions/compensation received by the Consultant and credit them against the remaining installments of the fee.
- Consultant shall submit with each invoice documentation of services rendered during each installment period, including detailed list of hours worked by each service team member and services attributable to those hours.
- If 40 hours of claim advocacy included in the fee are not used during the contract period, then those unused hours will be prorated and a credit will be issued to the City. If additional loss prevention or claim advocacy are authorized above the 30 and 40 hours respectively, the Consultant shall be paid for such services on the same installment dates noted above. Payment for such special services shall be based on the Consultant's hourly rates and shall be invoiced prior to each of those dates.
- The City shall pay all amounts to which no dispute exists within 30 days of receipt of the invoice. Payment of any bill, however, does not preclude the City from later determining that an error in payment was made and from withholding the disputed sum from the next progress payment until the dispute is resolved.
- The Consultant shall make full payment to its subcontractors within 10 business days following receipt of any payment made by the City to Consultant.
- Consultant shall prepare and submit all invoices for premiums and related charges for each insurance policy procured within seven (7) days of binding each line of coverage. BES shall remit payment for insurance premiums and related charges within 14 days upon submission of an invoice from the Consultant.

PROGRAM BUDGET

The below figures do not contemplate a marketing effort on builder's risk or environmental coverage for the BES and PWB. Should the City elect to market these coverages, an additional \$25,000 would be required for each line (\$50,000).

Insurance and Broker Services

The total estimated budget for brokerage services is \$269,204, broken out per year as follows:

Year 1 Sept. 1, 2015 - 2016	Year 2 Sept. 1, 2016 - 2017	Year 3 Sept. 1, 2017 - 2018	Year 4 Sept. 1, 2018 - 2019	Year 5 Sept. 1, 2019 - Closeout
\$94,222	\$47,111	\$47,111	\$47,111	\$33,650

Administrative Services

The total estimated budget for OCIP administrative services is 272,210, broken out per year as follows:

Year 1 Sept. 1, 2015 - 2016	Year 2 Sept. 1, 2016 - 2017	Year 3 Sept. 1, 2017 - 2018	Year 4 Sept. 1, 2018 - 2019	Year 5 Sept. 1, 2019 - Closeout
\$93,024	\$48,512	\$48,511	\$48,511	\$34,653

Hours and Rates

Position / Role	Estimated Hours	Rate/hr	Total Estimated Cost
Client Executive	40	\$235	\$9,400
Sr. Program Manager/ Program Manager	1,055	\$204	\$215,220
OCIP Marketing and Advisory	175	\$204	\$35,700
OCIP Administrator	1,869.22	\$98	\$183,184
Claims Advisory	106	\$204	\$21,624
Property and Environmental Client Advisory	117	\$204	\$23,868
Subconsultant (NICI)	973.22	\$59	\$57,420
	4,335.44		\$546,416

ACH Payments

It is the City's policy to pay its Consultant invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices, Consultants shall execute the City's standard ACH Vendor Payment Authorization Agreement which is available on the City's website at:
<http://www.portlandoregon.gov/bfs/article/409834?>

Upon verification of the data provided, the Payment Authorization Agreement will authorize the City to deposit payment for services rendered directly into Consultant accounts with financial institutions. All payments shall be in United States currency.

WORKERS' COMPENSATION INSURANCE STATEMENT

187 2 9 6

IF YOUR FIRM HAS CURRENT WORKERS' COMPENSATION INSURANCE, CONSULTANT MUST SIGN HERE:

I, undersigned, am authorized to act on behalf of entity designated below, and I hereby certify that this entity has current Workers' Compensation Insurance.

Consultant Signature: _____ Date: _____ Entity: Marsh USA Inc.

IF YOUR FIRM DOES NOT HAVE CURRENT WORKERS' COMPENSATION INSURANCE, CONSULTANT MUST COMPLETE THE FOLLOWING INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT:

As an independent contractor, I certify that I meet the following standards:

1. The individual or business entity providing labor or services is registered under ORS Chapter 701, if the individual or business entity provides labor or services for which such registration is required;
2. Federal and state income tax returns in the name of the business or a business Schedule C or form Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and
3. The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist.

Contractor: check four or more of the following:

- _____ A. The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;
- _____ B. Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;
- _____ C. Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;
- _____ D. Labor or services are performed only pursuant to written contracts;
- _____ E. Labor or services are performed for two or more different persons within a period of one year; or
- _____ F. The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Consultant Signature

Date

FOR CITY USE ONLY

PROJECT MANAGER-COMplete ONLY IF CONSULTANT DOES NOT HAVE WORKER'S COMPENSATION INSURANCE
ORS 670.600 Independent contractor standards. As used in various provisions of ORS Chapters 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met. The contracted work meets the following standards:

1. The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;
2. The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;
3. The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;
4. The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;
5. Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer.

City Project Manager Signature

Date

CONSULTANT SIGNATURE:

This contract may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same Agreement.

The parties agree the City and Consultant may conduct this transaction, including any contract amendments, by electronic means, including the use of electronic signatures.

I, the undersigned, agree to perform work outlined in this contract in accordance to the STANDARD CONTRACT PROVISIONS, the terms and conditions, made part of this contract by reference, and the STATEMENT OF THE WORK made part of this contract by reference; hereby certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; hereby certify that my business is certified as an Equal Employment Opportunity Affirmative Action Employer and is in compliance with the Equal Benefits Program as prescribed by Chapter 3.100 of Code of the City of Portland; and hereby certify I am an independent contractor as defined in ORS 670.600.

MARSH USA INC.

BY: _____ Date: _____

Name: Raymond Schneider

Title: Senior Vice President

187296

CONTRACT NUMBER: _____

CONTRACT TITLE: Insurance Brokerage Services for OCIP Phase V

CITY OF PORTLAND SIGNATURES:

By: n/a Date: _____
Bureau Director

By: n/a Date: _____
Chief Procurement Officer

By: _____ Date: _____
Elected Official

Approved:

By: _____ Date: _____
Office of City Auditor

Approved as to Form:

By: _____ Date: _____
Office of City Attorney