

**ORDINANCE - EXHIBIT A**

184007

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

CONTRACT NO. \_\_\_\_\_

**SHORT TITLE OF WORK PROJECT:  
Owner Controlled Insurance Program (OCIP) Phase IV  
Bureau of Environmental Services Capital Improvement Projects and  
Water Bureau LT2 Storage Improvement Program**

This contract is between the City of Portland, acting by and through its Elected Officials, hereafter called "City," and Marsh USA Inc., hereafter called Contractor. The City's Project Manager for this contract is Mike Reiner.

**Effective Date and Duration**

This contract shall become effective on July 1, 2010 . This contract shall expire, unless otherwise terminated or extended, on June 30, 2015. The contract may be extended through June 30, 2016, if necessary, for project closeout.

**Consideration**

- (a) City agrees to pay Contractor a sum not to exceed \$600,000 for accomplishment of the work, per the annual budgets set forth in the STATEMENT OF THE WORK.
- (b) Interim payments shall be made to Contractor according to the schedule identified in the STATEMENT OF THE WORK.

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**CONTRACTOR DATA AND CERTIFICATION**

Name (please print): \_\_\_\_\_ Marsh USA Inc. \_\_\_\_\_

Address: \_\_\_\_\_ 111 SW Columbia, Suite 500, Portland, OR 97201 \_\_\_\_\_

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

City of Portland Business License # 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.

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**STANDARD CONTRACT PROVISIONS FOR  
PROFESSIONAL, TECHNICAL & EXPERT SERVICES (MANDATORY PROVISIONS)**

**1. Access to Records**

The Contractor shall maintain, and the City of Portland ("City") and its duly authorized representatives shall have access to the books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Contractor's internal correspondence will not be made available. Copies of applicable records shall be made available upon reasonable request. Payment for cost of copies is reimbursable by the City.

**2. Audits**

- (a) The City, either directly or through a designated representative, 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 section 1, **Access to Records**. 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 General Accounting Office.
- (b) If an audit discloses that payments to the Contractor were in excess of the amount to which the Contractor was entitled, then the Contractor shall repay the amount of the excess to the City.
- (c) If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the City may pursue remedies provided under section 5, **Early Termination of Agreement** and section 7, **Remedies**.

**3. Effective Date and Duration**

The passage of the contract expiration date (as recorded on reverse side) 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 cured.

**4. Order of Precedence**

This contract consists of the terms and conditions of this contract, the Request for Proposals (RFP) issued by the City, if any, and the Contractor's proposal in response to the RFP. In the event of any apparent or alleged conflict between these various documents, the following order of precedence shall apply to resolve the conflict: a) this contract's terms and conditions, b) this Contractor's statement of Work.

**5. Early Termination of Agreement**

- (a) The City and the Contractor, by mutual written agreement, may terminate this Agreement at any time.
- (b) The City, on thirty (30) days written notice to the other party, may terminate this Agreement for any reason deemed appropriate in its sole discretion. The Contractor, on ninety (90) days written notice, may terminate this Agreement for any reason deemed appropriate in its sole discretion.
- (c) Either the City or the Contractor may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.
- (d) The obligation of Contractor and its affiliates (including its UK affiliates) to provide services to City will cease upon the effective date of termination, unless otherwise agreed in writing. Contractor will assist City in arranging a smooth transition process, subject to receipt by Contractor of all amounts due to Contractor from City.

**6. Payment on Early Termination**

- (a) In the event of termination under subsection 5(a) or 5(b), **Early Termination of Agreement** hereof, the City shall pay the Contractor for work performed in accordance with the Agreement prior to the termination date.
- (b) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the Contractor due to a breach by the City, then the City shall pay the Contractor as provided in subsection (a) of this section.
- (c) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the City due to a breach by the Contractor, then the City shall pay the Contractor as provided in subsection (a) of this section.

**7. Remedies**

- (a) In the event of termination under subsection 5(c), **Early Termination of Agreement**, hereof, by the City due to a breach by the Contractor, then the City may complete the work either itself, by agreement with another contractor or by a combination thereof.
- (b) The remedies provided to the City under section 5, **Early Termination of Agreement** and section 7, **Remedies** for a breach by the Contractor shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.
- (c) In the event of breach of this Agreement by the City, then the Contractor's remedy shall be limited to termination of the Agreement and receipt of payment as provided in section 5(c), **Early Termination of Agreement** and section 6(b), **Payment on Early Termination** hereof.

**8. Subcontracts and Assignment**

Contractor 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 subcontractor, the Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if subcontractors are employed in the performance of this Agreement, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

**9. Compliance with Applicable Law**

In connection with its activities under this Agreement, Contractor shall comply with all applicable federal, state and local laws and regulations including the City's Equal Benefits Ordinance and its administrative rules, all of which are incorporated by this reference. Failure to comply with the Ordinance permits the City to impose sanctions or require remedial actions as stated in Section 13.1 of the administrative rules. Contractor shall complete the INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT, which is attached hereto and by this reference made a part hereof.

**(a) Indemnity for Personal Injury and Property Damage**

Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions of whatsoever nature, including negligent and intentional acts, directly resulting from Contractor's actions that cause personal injury, property damage or both. Nothing in this section requires the Contractor or its insurer to indemnify the City for any claims or losses arising out of death, or bodily injury to persons, or property damage caused by the negligence or intentional actions of the City **10. Insurance**

During the term of this contract Contractor shall maintain in force at its own expense, each insurance noted below:

- (a) Workers' Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027).

- (b)  Required and attached or  Waived by City Attorney: \_\_\_\_\_

General Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this contract, and shall provide that City of Portland, and its officers, and employees are Additional Insured but only with respect to the Contractor's services to be provided under this Contract:

- (c)  Required and attached or  Waived by City Attorney: \_\_\_\_\_  
Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, including coverage for owned, hired, or nonowned vehicles, as applicable:
- (d)  Required and attached or  Waived by City Attorney: \_\_\_\_\_

Professional Liability insurance with a combined single limit of not less than \$1,000,000 per claim, incident, or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this contract. If insurance coverage is provided on a "claims made" basis, the successful Proposer shall acquire a "tail" coverage or continue the same coverage for three years after completion of the contract, provided coverage is available and economically feasible. If such coverage is not available or economically feasible, contractor shall notify City immediately.

- (e) On all types of insurance. There shall be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without first endeavoring to provide 30-days written notice from the Contractor or its insurer(s) to the City.
- (f) Certificates of insurance. As evidence of the insurance coverages required by this contract, the Contractor shall furnish acceptable insurance certificates to the City at the time contractor returns signed contracts. The certificate will specify all of the parties who are Additional Insured and will include the 30-day cancellation clause and 10-day non-payment clause that provides that the insurance shall not terminate or be cancelled without first endeavoring to provide 30 days or 10 days written notice to the City Auditor. Insuring companies or entities are subject to City acceptance. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

#### 11. Nondiscrimination

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans With Disabilities Act of 1990 (Pub L. No. 101-336) including Title II of that Act, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

#### 12. 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.

#### 13. Severability

The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, such term or provision 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 Agreement, as modified, enforceable, and the balance of this Agreement shall not be affected thereby, the balance being construed as severable and independent.

#### 14. 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.

#### 15. Errors

The Contractor shall perform such additional work as may be necessary to correct errors in the work required under this contract without undue delays and without additional cost.

#### 16. Governing Law

The provisions of this contract shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Multnomah County Oregon.

#### 17. 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.

**18. Business License**

The Contractor shall obtain a City of Portland business license as required by PCC 7.02 prior to beginning work under this Agreement. The Contractor shall provide a business license number in the space provided on page one of this Agreement. Additionally, the Contractor shall pay all fees or taxes due under the Business License Law and the Multnomah County Business Income Tax (MCC Chapter 12) during the full term of this contract. Failure to be in compliance may result in payments due under this contract to be withheld to satisfy amount due under the Business License Law and the Multnomah County Business Income Tax Law.

**19. Prohibited Interest**

(a) No City officer or employee during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

(b) No City officer or employee who participated in the award of this Agreement shall be employed by the Contractor during the period of the Agreement.

**20. Payment to Vendors and Subcontractors**

The Contractor shall timely pay all suppliers, lessors and contractors providing it services, materials or equipment for carrying out its obligations under this Agreement. The Contractor shall not take or fail to take any action in a manner that causes the City or any materials that the Contractor provides hereunder to be subject to any claim or lien of any person without the City's prior written consent.

**Merger Clause**

THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE IF MADE, SHALL BE EFFECTIVE ONLY IN SPECIFIC INSTANCES AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. CONTRACTOR, BY THE SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE OR SHE HAS READ THIS CONTRACT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

**OPTIONAL PROVISIONS (selected by City Project Manager)****21. Arbitration: /  / Not Applicable /  / Applicable (consult with City Attorney's Office before finalizing as applicable)**

(a) Any dispute arising out of or in connection with this Agreement, which is not settled by mutual agreement of the Contractor and the City within sixty (60) days of notification in writing by either party, shall be submitted to an arbitrator mutually agreed upon by the parties. In the event the parties cannot agree on the arbitrator, then the arbitrator shall be appointed by the Presiding Judge (Civil) of the Circuit Court of the State of Oregon for the County of Multnomah. The arbitrator shall be selected within thirty (30) days from the expiration of the sixty (60) day period following notification of the dispute. The arbitration, and any litigation arising out of or in connection with this Agreement, shall be conducted in Portland, Oregon, shall be governed by the laws of the State of Oregon, and shall be as speedy as reasonably possible. The applicable arbitration rules for the Multnomah County courts shall apply unless the parties agree in writing to other rules. The arbitrator shall render a decision within forty-five (45) days of the first meeting with the Contractor and the City. Insofar as the Contractor and the City legally may do so, they agree to be bound by the decision of the arbitrator.

(b) Notwithstanding any dispute under this Agreement, whether before or during arbitration, the Contractor shall continue to perform its work pending resolution of a dispute, and the City shall make payments as required by the Agreement for undisputed portions of work.

**22. Progress Reports: /  / Applicable /  / Not Applicable**

The Contractor shall provide monthly progress reports to the Project Manager. If applicable, the STATEMENT OF THE WORK should list what information the Contractor must include in monthly progress reports.

**23. Contractor's Personnel: /  / Applicable /  / Not Applicable**

The Contractor shall assign the following personnel to do the work in the capacities designated: If applicable, list selected personnel in the STATEMENT OF THE WORK. The Contractor shall not change personnel assignments without the prior written consent of the City's project manager for this contract.

**24. Subcontractors: /  / Applicable /  / Not Applicable**

The City requires Contractors to use the Minority, Women and Emerging Small Business (M/W/ESB) subcontractors identified in their proposals, and as such the Contractor shall assign these subcontractors as listed in the STATEMENT OF THE WORK to perform work in the capacities designated. The Contractor shall not change subcontractor assignments without the prior written consent of the Purchasing Agent.

**25. Disclaimers; Limitation of Liability**

In no event shall either party to this Agreement 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 Contractor or its affiliates. The aggregate liability of Contractor, its affiliates and its and their employees to City or Cityr affiliates arising out of or relating to the provision of services by Contractor or its affiliates shall not exceed \$10 million. This provision applies to the fullest extent permitted by applicable law.

Contractor will not be responsible for the adequacy or effectiveness of any insurance programs or policies implemented by another broker, or any acts or omissions occurring prior to Contractor's engagement.

**26. Taxes and Fees**

Contractor may place insurance for City that may require the payment of insurance premium taxes (including U.S. federal excise taxes), sales taxes, use taxes, surplus or excess lines and similar taxes and/or fees to federal, state or foreign regulators, boards or associations. If not exempt, City agree to pay such taxes and fees. Contractor will remit any taxes and fees that it collects from City to the appropriate authorities.

City will review all policy documents provided to City by Contractor.

**27. Other Revenue**

If Contractor assists City with obtaining premium financing, Contractor may receive compensation from the finance company that provides the premium financing. Contractor shall provide to City information relating to Contractor's and its affiliates' arrangements with and interests in the premium finance companies to be considered by City and the compensation that Contractor and its affiliates would receive from these companies for the City's placements.

Contractor earns and retains interest income on premium payments held by Contractor on behalf of insurers between the time Contractor receives these payments from City and the time Contractor remits these payments to the insurers, where permitted by applicable law.

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## STATEMENT OF THE WORK

**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 employers liability, commercial general liability, builders risk, pollution liability and, excess liability,] to cover the risks/exposures of BES' capital improvement projects and Water Bureau LT2 Storage Program. Any additional lines of insurance purchased by BES and/or Water Bureau through Contractor will be addressed via addendum to this Agreement prior to the purchase of such additional insurance.
4. Contractor 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 Contractor 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. Contractor does not speak for any insurer, is not bound to utilize and particular insurer, and does not have the authority to make binding commitments on behalf of any insurer.
7. Contractor does not guarantee or make any representation or warranty that insurance can be placed on terms acceptable to the City.
8. Contractor 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 Contractor 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 Contractor 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, Contractor 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 Contractor's professional judgment those services are necessary or appropriate. Such intermediaries may be affiliates of Contractor or not related to Contractor. The compensation of such intermediaries is not included in Contractor'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 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. 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 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's current insurers and alert the City when their status falls below Contractor's minimum guidelines. The Contractor 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. Assist the insurance company with arranging medical services near the project sites for injured parties from OCIP activities. Assist with negotiation of fees with Managed Care Organizations.
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 Contractor client executive contrary instructions in writing, whenever the Contractor client executive is informed in writing by the City that a claim has been notified to the primary carrier Contractor will notify all applicable excess carriers where Contractor has placed the applicable excess policies or the Contractor client executive has been provided written notice by the City of the applicable carrier and policies. If Contractor is instructed not to provide notice to any excess carrier, Contractor shall have no responsibility for any consequences arising out of the failure to give notice.

**C. OCIP Administrative Services**

1. By May 1<sup>st</sup> 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 as required to ensure all necessary OCIP provisions have been incorporated, identify project loss exposures and to 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 capital improvement 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 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 Contractor 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 Contractor's visit. Contractor 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 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, Contractor retains ownership of all proprietary software and data that is input or used on such proprietary software systems.

### CONTRACTOR PERSONNEL

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

| NAME                | ROLE ON PROJECT                  |
|---------------------|----------------------------------|
| Bob Limperis        | Client Executive                 |
| Shon DeVries        | Project Manager                  |
| Ann Anderson        | Deputy Project Manager           |
| Theresa Carey-Brill | OCIP Administrator               |
| Linda Galvin        | Workers' Compensation Specialist |

### SUBCONTRACTORS

The Contractor shall assign the following subcontractors to perform work in the capacities designated:

| NAME                         | ROLE ON PROJECT           |
|------------------------------|---------------------------|
| Featherlite Enterprises, LLC | Administration and Claims |

The City will enforce all diversity in workforce and Minority, Women and Emerging Small Business (M/W/ESB) subcontracting commitments submitted by the Contractor in its Proposal. For contracts valued \$100,000 or more, the Contractor shall submit a Monthly Subconsultant Payment and Utilization Report (MUR), made part of this contract by reference, reporting ALL subcontractors employed in the performance of this agreement. An electronic copy of the MUR may be obtained at: <http://www.portlandonline.com/shared/cfm/image.cfm?id=119851>.

### COMPENSATION

- Contractor 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.
- Contractor shall invoice the City in four equal quarterly installments. Installment dates are as follows: September 1, December 1, March 1, and June 1. With respect to insurance placed by the Contractor on the City's behalf, the Contractor shall disclose any commissions/compensation received by the Contractor and credit them against the remaining installments of the fee.
- Contractor 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 the 30 hours of loss prevention services and 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 Contractor shall be paid for such services on the same installment dates noted above. Payment for such special services shall be based on the Contractor'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 Contractor shall make full payment to its subcontractors within 10 business days following receipt of any payment made by the City to Contractor.
- Contractor 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 Contractor.



- Under no circumstances shall the total compensation exceed \$200,000 for the first year, or exceed \$100,000 for each subsequent year, for services and special services provided under this contract. The payment shall be full compensation for work performed, services rendered, and for all labor, materials, supplies, equipment, and incidentals necessary to perform the work and services.

## PROGRAM BUDGET

### Insurance and Broker Services

The total estimated budget for brokerage services is \$257,250, broken out per year as follows:

| <b>Year 1</b><br>July 1, 2010 - 2011 | <b>Year 2</b><br>July 1, 2011 - 2012 | <b>Year 3</b><br>July 1, 2012 - 2013 | <b>Year 4</b><br>July 1, 2013 - 2014 | <b>Year 5</b><br>July 1, 2014 - Closeout |
|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|------------------------------------------|
| \$90,037                             | \$45,019                             | \$45,019                             | \$45,019                             | \$32,156                                 |

### Administrative Services

The total estimated budget for OCIP administrative services is \$264,900, broken out per year as follows:

| <b>Year 1</b><br>July 1, 2010 - 2011 | <b>Year 2</b><br>July 1, 2011 - 2012 | <b>Year 3</b><br>July 1, 2012 - 2013 | <b>Year 4</b><br>July 1, 2013 - 2014 | <b>Year 5</b><br>July 1, 2014 - Closeout |
|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|------------------------------------------|
| \$92,715                             | \$46,358                             | \$46,357                             | \$46,357                             | \$33,113                                 |

### Hours and Rates

| <b>Position / Role</b>       | <b>Estimated Hours</b> | <b>Rate</b> | <b>Estimated Cost</b> |
|------------------------------|------------------------|-------------|-----------------------|
| Client Executive             | 60                     | \$225       | \$13,500              |
| Project Manager              | 620                    | \$195       | \$120,900             |
| Assistant Project Manager    | 600                    | \$130       | \$78,000              |
| OCIP Administration          | 2,250                  | \$90        | \$202,500             |
| Casualty Client Advisor      | 50                     | \$195       | \$9,750               |
| Safety/Loss Control          | 300                    | \$195       | \$58,500              |
| Claims Advisor               | 150                    | \$195       | \$29,250              |
| Environmental Client Advisor | 50                     | \$195       | \$9,750               |
|                              | <b>4,080</b>           |             | <b>\$522,150</b>      |

INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT

184007

SECTION A

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

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_ Entity \_\_\_\_\_

If entity does not have Workers' Compensation Insurance, City Project Manager and Contractor complete the remainder of this form.

SECTION B

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 \_\_\_\_\_

SECTION C

Independent contractor certifies he/she meets 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.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_

**CONTRACTOR 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 Contractor 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: \_\_\_\_\_

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

Contract No. \_\_\_\_\_

Contract Title: Insurance Brokerage Services for OCIP Phase IV

**CITY OF PORTLAND SIGNATURES:**

By:                   n/a                   Date: \_\_\_\_\_  
Bureau Director

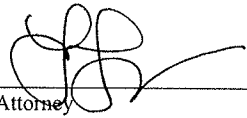
By:                   n/a                   Date: \_\_\_\_\_  
Chief Procurement Officer

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Elected Official

Approved:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Office of City Auditor

Approved as to Form:

By:                                      Date: 6/21/10  
Office of City Attorney