

BROKER SERVICES CONTRACT

BY AND BETWEEN

MERRIWETHER AND WILLIAMS INSURANCE SERVICES

AND

THE CITY OF LOS ANGELES

March, 2013

BROKER SERVICES CONTRACT

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THIS Broker Services Contract (CONTRACT) is made and entered into on March 1, 2013 by and between MERRIWETHER AND WILLIAMS INSURANCE SERVICES, INC. (BROKER), and the CITY OF LOS ANGELES (CITY) acting through its Office of the City Administrative Officer, Risk Management (RISK MANAGEMENT). Under the Citywide Bond Assistance Program Los Angeles (PROGRAM), the BROKER will provide services Citywide, including services at the Department of Water and Power, Port of Los Angeles and Los Angeles World Airports (Proprietaries) as outlined in Section 1. Each Proprietary will enter into a separate contract with BROKER for specific PROGRAM services. A Memorandum of Understanding, as approved by the Proprietaries' Boards, outlines each department's responsibilities under the PROGRAM.

RECITALS:

- A. CITY requires contractors to obtain bid, payment, and performance bonds when working on CITY projects.
- B. It has come to the attention of CITY that some contractors are unable to compete for CITY work due to their difficulty obtaining the required surety bonds.
- C. BROKER possesses the requisite knowledge and resources desired by CITY in its efforts to administer the Citywide Bond Assistance Program Los Angeles.

NOW, THEREFORE, the parties do agree as follows:

1.0 BROKER SERVICES

BROKER shall assist CITY in:

- 1.1 Conducting a Citywide outreach designed to encourage PROGRAM participation from Small/MBE/WBE/DBE contractors and educate them on the PROGRAM and its worth.
- 1.2 Attending CITY workshops and meetings coordinated by the Mayor's Office of Economic Development as well as other City Departments.
- 1.3 Providing needed materials as requested by the CITY and/or making presentations to highlight PROGRAM.
- 1.4 Establishing strategies for addressing the factors that lead to bond denials.
- 1.5 Selecting qualified, financially sound surety underwriting facilities and developing working relationships with these resources to assist in the process of bonding contractors. If necessary and appropriate, negotiating and developing written agreements with these entities on behalf of the CITY.

- 1.6 Providing training to CITY staff and others as deemed necessary.
- 1.7 Working with selected sureties to develop underwriting criteria that will protect CITY resources but will allow maximum participation by contractors/subcontractors requiring bond assistance.
- 1.8 Establishing a network of advisors and service providers as necessary to assist contractors/subcontractors in the qualification process and to help ensure successful participation in the PROGRAM.
- 1.9 Developing necessary forms, instruction documents, procedure manuals and other written control mechanisms for operation of the PROGRAM.
- 1.10 Educating contractors/subcontractors on the surety bonding process and on the necessary steps to qualify. Providing technical and financial guidance and counseling to Small/MBE/WBE/DBE contractors/subcontractors, on such items as preparation of financial reports and business plans, insurance placement, bonding application and establishment of assets or credit resources for operating capital.
- 1.11 Referring contractors/subcontractors to qualified resources such as bankers, accountants, economic development advisors and CITY resources. Providing, through subcontracts, services such as third-party funds administration, financial statement review, etc.
- 1.12 Providing conflict resolution between PROGRAM participating contractors, subcontractors, service providers, and surety underwriting facilities.
- 1.13 Verifying and reporting on a quarterly basis the accuracy and validity of all fees charged. Establishing accounting controls for all CITY funds used in the PROGRAM and oversee their administration. Underwriting and managing City collateral such as letters of credit, financial guarantees, etc. and making recommendations to the CITY as respects guarantee transactions for the CITY's approval. Broker will not be held financially responsible for contractor defaults.
- 1.14 Providing monthly reports to Risk Management that documents the number of contractors counseled and bonded and that highlight savings to the PROGRAM resulting from PROGRAM-qualified contractors/subcontractors winning bids.
- 1.15 Providing outreach to non-English speaking contractors/subcontractors.
- 1.16 Preparing an annual closeout report documenting success of the PROGRAM.

1.17 Monitoring contractor/subcontractor activities to ensure continued financial and organizational stability while any CITY PROGRAM liability is outstanding.

1.18 Providing additional, related PROGRAM services and construction activities as deemed necessary and as requested by CITY.

2.0 CITY RESPONSIBILITIES

The CITY shall:

2.1 Assign Director of Risk Management to function as PROGRAM coordinator.

2.2 Provide accurate and timely information to BROKER when requested.

2.3 Provide payment to BROKER for Broker Services (see list above) and PROGRAM expenses (Third-party Funds Administrator (TPFA), financial statements, etc.) within sixty (60) days after receipt of valid invoice. Provide payments for other PROGRAM expenses as necessary.

2.4 Provide financial guarantees and/or other financial mechanisms as deemed necessary.

3.0 STAFFING AND SUBCONTRACTING

3.1 BROKER is not an employee, agent, or other representative of the CITY. BROKER has no authority to act for, legally represent, or otherwise bind or legally commit the CITY in any way except as authorized in writing by the City Administrative Officer or the Director of Risk Management as designee. Notwithstanding the foregoing provisions, the duty of BROKER to the CITY is a fiduciary one entailing the highest duty of individual loyalty.

Upon prior written approval by CITY, BROKER may enter into subcontracts for the performance of parts of the services associated with this CONTRACT. CITY reserves the right to approve or disapprove any BROKER subcontractors prior to commencement of work on PROGRAM. Nothing in this CONTRACT shall constitute any contractual relationship between any subcontractor and the CITY or its Departments.

4.0 COMPENSATION FEES AND REIMBURSEMENT

4.1 BROKER will collect all Broker Services fees and PROGRAM expenses directly from the CITY.

4.2 Monthly invoices shall be submitted to CITY at the following address:

City of Los Angeles
Office of the City Administrative Officer
Risk Management
200 N. Main St., Room 1240
Los Angeles, CA 90012

4.3 Written correspondence, or official contact from CITY to BROKER, shall be submitted to the following address:

Merriwether and Williams Insurance Services
San Francisco, CA 94104

4.4 BROKER shall disclose all commission amounts to CITY in the report specified in 1.13 above.

4.5 It is expressly understood and agreed that in no event shall the Broker Services fee and PROGRAM expenses to be paid under this three-year CONTRACT exceed the maximum sum of One Million Two Hundred and Twenty Three Thousand dollars (\$1,223,000), unless provided by written amendment hereto. Any commissions, bonuses, fees or anything else of value received by BROKER as it relates to Broker Services (Section 1) shall be credited against the fees paid by CITY to BROKER. Contingent commissions will not be allowed.

4.6 Any commissions, bonuses, fees or anything else of value received by BROKER under this three-year CONTRACT, as it relates to Broker Services (Section 1) in excess of the One Million Two Hundred and Twenty Three Thousand dollars (\$1,223,000) fee, shall be reimbursed to the CITY.

4.6.1 Payment for Broker Services and PROGRAM expenses shall be made to BROKER on a monthly basis. BROKER may submit the first detailed invoice on or after April 1, 2013, with subsequent monthly invoices submitted each first of the month thereafter. Each invoice will include data such as, CITY department, administrator work item, hours, date, cost, rate (if applicable), detailed subcontractor expense items, etc.

5.0 TERM OF CONTRACT AND CANCELLATION

5.1 The term of CONTRACT shall be from March 1, 2013 through February 29, 2016.

5.2 This CONTRACT may be canceled by either party on thirty (30) days' written notice or by mutual agreement of the parties. Said notice, on the CITY's behalf, will be given by the City Administrative Officer or the Director of Risk Management as designee. Upon such cancellation, BROKER shall: a) make an accounting to CITY of all fees paid and any amounts due, b) provide CITY with copies of all documents and any related information necessary for CITY to continue the administration of the PROGRAM.

6.0 GOVERNING LAW

6.1 This CONTRACT is made under and shall be construed in accordance with and governed by the laws of the State of California.

6.2 BROKER shall comply with all laws, rules, and regulations applicable to its performance of the services provided hereunder.

6.3 CITY's failure to enforce any provisions of this CONTRACT, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

6.4 If any provision or part of this CONTRACT shall be declared illegal, void, or unenforceable, the remaining provisions shall continue in full force and effect.

7.0 ATTACHMENTS

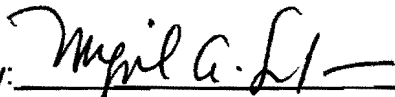
7.1 The Standard Provisions for City Contracts, Rev. 03/09, (STANDARD PROVISIONS), Request for Proposals, dated October 15, 2012, and the Broker's proposal, dated November 28, 2012, are hereby incorporated into and made a part of this CONTRACT as though set forth at length. In the event of any inconsistency between the provisions of this CONTRACT, the STANDARD PROVISIONS, Request for Proposals, or Broker's Proposal, the inconsistency shall be resolved by giving precedence as follows:

1. CONTRACT
2. Standard Provisions,
3. Request for Proposals
4. Broker's Proposal

IN WITNESS WHEREOF, the Parties have executed this CONTRACT as of the day and year first written above.

CITY OF LOS ANGELES

MERRIWETHER AND WILLIAMS
INSURANCE SERVICES

By: 
Miguel A. Santana
City Administrative Officer

By: 
Ingrid Merriwether
President & CEO

APPROVED AS TO FORM:
Carmen A. Trutanich, City Attorney

CITY CLERK

By: 
Edward Jordan,
Assistant City Attorney

Attest: _____
June Lagmay
City Clerk

EXHIBIT 1

The BROKER fees and PROGRAM expenses will be funded by the Sewer Construction and Maintenance Fund (wastewater projects). The following are the hourly rates proposed by BROKER for the Citywide PROGRAM.

Broker Estimated Staff Cost Breakdown

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Program Acct. Manager	\$163	\$168	\$173
Surety Specialist	\$127	\$131	\$135
Field Project Support Mgr.	\$140	\$144	\$148
Surety Tech. Coordinator	\$ 79	\$ 83	\$ 87
Administrative Assistant	\$ 37	\$ 39	\$ 41
Director of Outreach	\$145	\$149	\$153
Asst. Director of Outreach	\$120	\$124	\$128
Senior Outreach Coordinator	\$ 60	\$ 62	\$ 64
Outreach Coordinator	\$ 35	\$ 36	\$ 37
Outreach Technician	\$ 29	\$ 30	\$ 31

Broker Invoicing

To ensure that services provided under personal services contracts are measured against services as detailed in the Agreement, the Controller of the City of Los Angeles has developed a policy requiring that specific supporting documentation be submitted with invoices.

Contractor shall submit an invoice that conform to City standards and include, at a minimum, the following information:

- i. Name and address of Contractor
- ii. Name and address of City department being billed
- iii. Date of invoice and period covered
- iv. Agreement number
- v. Description of completed project and amount due, including name of personnel working on project
- vi. Certification by a duly authorized officer
- vii. Discount and terms (if applicable)
- viii. Remittance Address (if different from company address)

The invoice shall be submitted on Contractor's letterhead, contain Contractor's official logo, or other unique and identifying information such as the name and address of Contractor. Evidence that work has been completed shall be attached to the invoice. Invoice shall be submitted within 30 days of completion of the project and shall be payable to the contractor no later than 30 days after acknowledged receipt of a complete invoice. Invoices are considered complete when appropriate documentation or services provided are signed off as satisfactory by the City representative.

The Invoice and supporting documentation shall be prepared at the sole expense and responsibility of Contractor. The City shall not compensate the contractor for costs incurred in invoice preparation. The City may request, in writing, changes to the content and format of the invoice and supporting documentation at any time. The City reserves the right to request additional supporting documentation to substantiate costs at any time.