



**AGENDA REPORT**

**PROPOSED ACTION: Resolution:** Approve and Authorize the Port of Oakland Risk Manager to Execute All Necessary Documents to Renew the Port of Oakland Pollution Liability Insurance with Beazley Excess and Surplus Insurance, Inc. and Markel Specialty as Evanston Insurance Co., Arranged and Paid Through an Insurance Broker, Alliant Insurance Services, Inc., as Described Herein for a Three-Year Term, Subject to Minor Adjustments Upon Placement, and in an Amount Not to Exceed \$1,250,000. **(Finance & Admin)**

Submitted By: Julie Lam, Chief Financial Officer; Danny Wan, Executive Director

<u>Parties Involved:</u> Alliant Insurance Services, Inc. (Alliant), (Insurance Broker), Los Angeles, CA Beazley Excess and Surplus Insurance, Inc. (Beazley), London, United Kingdom, San Francisco, CA – Admin Markel Specialty as Evanston Insurance Co. (Markel), Rosemond, IL, New York, NY – Admin	<u>Amount:</u> Not to Exceed \$1,250,000 (Operating Expense)
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**EXECUTIVE SUMMARY:** Port of Oakland (Port) Staff requests to renew the Port’s Pollution Liability Insurance (PLL) that expires on December 14, 2024, for a three-year term expiring December 14, 2027, at a cost expected to be \$1,116,932 but not to exceed \$1,250,000. The insurance coverage offered for the new term is similar to the expiring insurance, with a few significant coverage improvements. The premiums are projected to increase approximately 8%, a compounded annual increase of less than 3% per year since the last renewal.

**BACKGROUND & ANALYSIS**

The Port has purchased various forms of pollution liability insurance for over twenty years. The Port’s current Port-wide Pollution Liability (Port-wide PLL) insurance policy generally provides the following coverage:

- Third party bodily injury and property damage arising out of a pollution condition;
- Non-owned disposal site liability arising out of disposal of waste;
- Damage to natural resources including non-criminal fines/penalties;
- Transported pollution incident related to transport of cargo;
- Clean-up costs for unknown pollution conditions; and
- Legal defense expenses related to all of the above.

The Board of Port Commissioners approved replacement of several pollution insurance policies with a single Port-wide program in FY 2012 and approved further consolidation of the Port's pollution insurance policies in FY 2022 when the Port-owned portion of the Oakland Army Base (OAB) was added to the Port-wide pollution insurance coverage eliminating the need for a separate OAB PLL. The current Port-wide PLL insurance expires on December 14, 2024.

The market for PLL insurance to cover property as large and varied as the Port is limited. Most insurers, including insurers with whom the Port used in the past, are now only willing to provide limited coverage for discovery of existing pollution conditions, a central issue for the Port, and some have left the domestic PLL market.

The Port obtained quotes for PLL insurance similar to the expiring Port-wide PLL insurance coverage through a competitive process managed by Alliant. Pursuant to Port Ordinance 4576 (PURCHASING AUTHORITIES AND PROCEDURES), Section 7. D. 1. Formal Competitive Procurement requirements shall not apply to the placements of insurance coverage. Alliant identified and requested quotes from four insurance companies potentially able to provide coverage similar to the expiring Port-wide PLL insurance. Of the four, only the incumbent PLL insurers, Beazley and Markel responded. Alliant is compensated through commissions of 17.5% on the Beazley policy and 15% on the Markel policy for a total compensation on this placement of \$182,171. These commissions are paid by the insurance companies.

There are two notable variances from the expiring Port-wide PLL insurance. First, the new policy provides better coverage for dredging activities. The new quote offers coverage for dredging activities to the full policy limits, rather than capping coverage at a \$10 million sublimit. More significantly, the self-insured retention for dredging losses has been reduced from \$1.5 million to \$500,000.

Second, the policy excludes losses from Per-and Polyfluoroalkyl Substances (PFAS) and related chemicals on all Port properties. The expiring policy provided coverage for losses incurred from PFAS on the OAB property but excluded losses on all other Port property. The new policy removes this OAB carve-out, meaning PFAS coverage is not provided for any Port property. This broad exclusion of PFAS is consistent across the current PLL marketplace, likely due to the uncertainty surrounding PFAS contamination and clean-up.

The improved coverage for dredging, including increase in limit and decrease in retention, are materially significant enhancements. While the loss of coverage for PFAS in the OAB is unfortunate, but typical of the current insurance market, the only current PFAS investigation order to the Port involves San Francisco Bay Oakland International Airport and not OAB.

Table 1 on the following page summarizes the terms of the PLL insurance coverage being recommended. For comparison purposes, the expiring policy terms are also provided.

**Table 1:  
PLL Insurance**

	<b>New</b>	<b>Expiring</b>
<b>Term</b>	3 years (12/14/2024 – 12/14/2027)	3 years (12/14/2021 – 12/14/2024)
<b>Premium</b>	\$1,116,932	\$1,034,897 <sup>1</sup>
<b>Premium per Year</b>	\$372,311 (8% increase)	\$344,966
<b>Coverage</b>	Port-wide New Conditions Prior Conditions (Unknown Only) Remediation Third Party Damages <i>Dredging-Related: Included</i>	Port-wide New Conditions Prior Conditions (Unknown Only) Remediation Third Party Damages <i>Dredging-Related: Included</i>
<b>Key Exclusions</b>	Known Conditions Prior Claims Asbestos Containing Materials Remediation Expenses <i>(Exceptions for Soil and Water)</i> Lead Based Paint Remediation Expenses <i>(Exceptions for Soil and Water)</i> Underground Tanks <i>(Except Those Added Back)</i> Internal Expenses PFAS	Known Conditions Prior Claims Asbestos Containing Materials Remediation Expenses <i>(Exceptions for Soil and Water)</i> Lead Based Paint Remediation Expenses <i>(Exceptions for Soil and Water)</i> Underground Tanks <i>(Except Those Added Back)</i> Internal Expenses PFAS <i>(OAB not Subject to This Exclusion)</i>
<b>Limits</b>	<u>Beazley:</u> \$10 Million Each Pollution Condition/ \$20 Million Aggregate <u>Markel:</u> \$10 Million Each Pollution Condition Excess/ \$20 Million Aggregate Excess <u>Combined:</u> \$20 Million Each Pollution Condition/ \$40 Million Aggregate  Dredging Gets Full Limit	<u>Beazley:</u> \$10 Million Each Pollution Condition/ \$20 Million Aggregate <u>Markel:</u> \$10 Million Each Pollution Condition Excess/ \$20 Million Aggregate Excess <u>Combined:</u> \$20 Million Each Pollution Condition/ \$40 Million Aggregate  \$10 Million Sublimit for Dredging
<b>Self-Insured Retentions</b>	\$250,000, Except: \$1,000,000 Capital Improvements/ Development \$500,000 Dredging	\$250,000, Except: \$1,000,000 Capital Improvements/ Development \$1,500,000 Dredging

As can be seen from the table, the new policy terms are similar, with some exceptions.

<sup>1</sup> The FY 2022 agenda report showed a credit for return premium of \$63,914 from canceling the 8/7/2018-8/7/2023 Oakland Army Base (OAB) policy early to add the OAB area to the Port-wide PLL policy. This credit has been removed from this comparison as both policies now cover the same area.

## OTHER FINDINGS AND PROVISIONS

### ENVIRONMENTAL REVIEW

The proposed action was analyzed under the California Environmental Quality Act (CEQA) and was found to be:

- Categorically exempt under the following CEQA Guidelines Section:

Choose an item.

- Not a "Project" under CEQA, as defined in Public Resources Code § 21065.
- "Common Sense" exemption under CEQA Guidelines Section 15061(b)(3).
- Other/Notes: This action, authorizing an expenditure of up to \$1,250,000 to renew Port of Oakland PLL insurance policies, is not a "Project" under CEQA Guidelines Section 15378(b)(4). Specifically, Section 15378(b)(4) states that "government fiscal activities which do not involve any commitment to any specific project" are not considered a project.

### BUDGET

- Administrative (No Impact to Operating, Non-Operating, or Capital Budgets); OR

Operating                       Non-Operating                       Capital

Analysis: The insurance premiums are budgeted under the Port's Operating Budget, excluding amounts reimbursed by tenants. Although insurance premiums are subject to change based on global and local events impacting the insurance market up until the insurance policies renew (December 14, 2024), it is anticipated that the insurance premiums will cost \$1,116,932 for a three-year term, or \$372,311 annually. This is an increase of approximately \$82,035 in total, or \$27,345 annually, compared to the expiring policies. Approximately \$233,407 in total, or \$77,802 annually, is expected to be reimbursed by Port tenants for a net cost to the Port of approximately \$883,525 in total, or \$294,509 annually. This annual amount is slightly over the amount included in the FY 2025 Operating Budget. This variance will be offset entirely by other favorable variances in premium for other lines of insurance which are under the budgeted amounts.

### STAFFING

- No Anticipated Staffing Impact.
- Anticipated Change to Budgeted Headcount.

Reason:

- Other Anticipated Staffing Impact (e.g., Temp Help).

Reason:

<p><b><u>MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA):</u></b></p> <p><u>Applies?</u> No (Not Aviation or Maritime CIP Project) – proposed action is not covered work on Port’s Capital Improvement Program in Aviation or Maritime areas above the threshold cost.</p> <p><input type="checkbox"/> <u>Additional Notes:</u></p>	<p><b><u>LIVING WAGE</u></b> (City Charter § 728):</p> <p><u>Applies?</u></p> <p>No (No Covered Agreement) – proposed action is not an agreement, contract, lease, or request to provide financial assistance within the meaning of the Living Wage requirements.</p> <p><input type="checkbox"/> <u>Additional Notes:</u></p>								
<p><b><u>SUSTAINABLE OPPORTUNITIES:</u></b></p> <p><u>Applies?</u> <b>No.</b></p> <p><u>Reason:</u> There are no sustainability opportunities related to this proposed action because it does not involve a development project, purchasing of equipment, or operations that presents sustainability opportunities, including adaptation to sea level rise.</p>	<p><b><u>GENERAL PLAN</u></b> (City Charter § 727):</p> <p><u>Conformity Determination:</u></p> <p>No. Project – conformity determination not required because proposed action does not change use of or make alterations to an existing facility, or create a new facility.</p>								
<p><b><u>STRATEGIC PLAN.</u></b> The proposed action would help the Port achieve the following goal(s) and objective(s) in the Port’s Strategic Business Plan:</p> <table border="0"><tr><td><input checked="" type="checkbox"/> Grow Net Revenues</td><td><input checked="" type="checkbox"/> Modernize and Maintain Infrastructure</td></tr><tr><td><input type="checkbox"/> Improve Customer Service</td><td><input type="checkbox"/> Pursue Employee Excellence</td></tr><tr><td><input type="checkbox"/> Strengthen Safety and Security</td><td><input type="checkbox"/> Serve Our Community</td></tr><tr><td><input type="checkbox"/> Care for Our Environment</td><td></td></tr></table>		<input checked="" type="checkbox"/> Grow Net Revenues	<input checked="" type="checkbox"/> Modernize and Maintain Infrastructure	<input type="checkbox"/> Improve Customer Service	<input type="checkbox"/> Pursue Employee Excellence	<input type="checkbox"/> Strengthen Safety and Security	<input type="checkbox"/> Serve Our Community	<input type="checkbox"/> Care for Our Environment	
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