



AGENDA REPORT

PROPOSED ACTION: Resolution: Approve and Authorize the Port of Oakland's Risk Manager to Execute all Necessary Documents, Subject to Approval of the Port Attorney as to Form and Legality, and to Approve Reasonable Substitutions of Insurers to Renew the Owner Controlled Insurance Program Arranged and Paid Through a Prime Insurance Broker for a Three-Year Term and in an Amount Not to Exceed \$7,300,000 Plus Posting of an Additional \$464,743 in Collateral (Subject to Audit Adjustment) and Related Actions and Finding that the Proposed Action is Exempt Under the California Environmental Quality Act. **(Finance & Administration)**

Submitted By: Julie Lam, Chief Financial Officer; Kristi McKenney, Executive Director

Parties Involved: See List Below

Amount: Not to Exceed \$7,300,000
(Capital Expenditure)

EXECUTIVE SUMMARY: The Port of Oakland's (Port) Owner Controlled Insurance Program (OCIP) provides insurance protection for the Port and enrolled contractors and sub-contractors involved in Port public works projects (Construction Contractors). The Port's current OCIP is set to expire on February 1, 2026. Port Staff seeks authorization to renew the OCIP program for a three-year term ending on February 1, 2029, as described in this Agenda Report. The recommended coverage is materially the same as the expiring policies.

Parties Involved:

OCIP Primary Insurance Carrier

Astrus Insurance Solutions (Astrus) LLC, Pasadena, CA, Federal Insurance Company (Federal), Whitehouse Station, NJ, Executive Risk Indemnity (Executive), Whitehouse Station, NJ (Federal and Executive, collectively Chubb)

OCIP Excess Insurance Carriers

Excess liability premium in Table 2 is based on indications received to date. It is anticipated that approximately ten excess insurance carriers will ultimately participate in providing \$150,000,000 in excess liability coverage. These will be selected from the firms in Table 1.

Table 1

OCIP Excess Insurance Carriers

Excess Carriers	
Admiral Insurance Company	Moorestown, NJ
AIG - Lexington Insurance Company (AIG)	Boston, MA
Allianz Underwriters Insurance Company	Burbank, CA
Allied World Assurance Company (AWAC)	New York, NY
Ambridge Partners LLC/Lloyd's of London Brit Syndicate	New York, NY/London UK

Excess Carriers <i>continued</i>	
AmTrust International Insurance Ltd.	New York, NY
Arch Insurance Company	Kansas City, MO
Ascot Specialty Insurance Company	Pembroke, Bermuda
Aspen Specialty Insurance Company	Bismarck, ND
AXA XL Insurance America, Inc.	New York, NY
Axis Insurance Co./Axis Surplus Lines Insurance Company	New York, NY
Berkley Insurance Company	Greenwich, CT
Berkshire Hathaway Group/National Fire and Marine Insurance Company/Berkshire Specialty Insurance Company/Cap Specialty (Berkshire)	Omaha, NE
Bowhead Specialty Underwriters/Homesite Insurance Company	New York, NY
Chubb Indemnity Insurance Company/Ace Property and Casualty Insurance Company/Executive Risk Indemnity Incorporated/Federal Insurance Company (Chubb)	New York, NY/ Philadelphia, PA/ Wilmington DE/Indianapolis, IN
Colony Insurance Company/Colony Specialty Insurance Company (Colony)	Richmond, VA
Columbia Casualty/CNA	Chicago, IL
Crum and Forster Indemnity Company/Crum and Forster Specialty Insurance Company (Crum and Forster)	Morristown, NJ
Emerald Insurance	Los Angeles, CA
Fair American Select Insurance Company	New York, NY
First Mercury Insurance Company	Southfield, MI
First Specialty XS/MS Transverse Specialty	New York, NY
Fortegra Specialty Insurance Company	Jacksonville, FL
Gotham Insurance Company	Morriston, NJ
Gray Surplus Lines Insurance Company	Metairie, LA
Great American Casualty Insurance Company	Cincinnati, OH
Hartford Fire and Casualty Group/Navigators Insurance Company/Navigators Specialty Insurance Company (Hartford)	Hartford, CT
HDI Global Insurance Company	Chicago, IL
Homesite Insurance Company	Boston, MA
Hudson Excess Insurance Company	Calabasas, CA
Liberty Insurance Group/Liberty Mutual Insurance Company/American Fire and Casualty Company/Ironshore Specialty Insurance Company/Liberty Insurance Underwriters, Inc. (Liberty)	Dover, NH/Boston, MA
Markel Insurance Company/Evanston Insurance Company/SPEAR Specialty (MGA)	Glen Allen, VA
Mercer Insurance Company	Cedar Rapids, IA
Mt. Hawley Insurance Company	Peoria, IL
Nationwide Insurance Company of America	Grandview Heights, OH
Palomar Specialty Insurance Company	La Jolla, CA
QBE Insurance Corporation	Harrisburg, PA
RSUI Indemnity Company	Atlanta, GA
SCOR Reinsurance Company	New York, NY
Scottsdale Insurance Company	Columbus, OH
Sierra Specialty Insurance Company	Clovis, CA
SiriusPoint America Insurance Company	New York, NY

Excess Carriers <i>continued</i>	
Sompo America Insurance Company/Endurance American Specialty Insurance Company	New York, NY
Starr Surplus Lines Insurance Company/Starr Indemnity and Liability Company (Starr)	New York, NY
Starstone Specialty Insurance Company via Shepherd Specialty Insurance Services, Inc.	Cincinnati, OH/San Francisco, CA
Swiss Re International SE	New York, NY
Texas Insurance Co.	Austin, TX
Tokio Marine/Houston Casualty Company/HCC International Insurance Company	Jersey Village, TX
Travelers Casualty Company	New York, NY
Underwriters at Lloyd's of London	London, United Kingdom
United Specialty Insurance Company	Bedford, TX
Upland Specialty Insurance Company	Dallas, TX
Vantage Group Holdings, Ltd./Vantage Risk Specialty Insurance Company	New York, NY/Pembroke, Bermuda
Westchester Surplus Lines Insurance Company	Alpharetta, GA
Westfield Specialty Insurance Company	Westfield Center, OH

Prime Insurance Broker

Alliant Insurance Services (Alliant), Los Angeles, CA

Intermediary Brokers

RT Specialty (RT), San Francisco, CA

Pantheon Specialty Limited (Pantheon), London, UK

BACKGROUND & ANALYSIS

The Port's OCIP provides workers' compensation, general liability and excess liability insurance protection for enrolled Construction Contractors involved in Capital Improvement Plan (CIP) construction projects. The Port has had an OCIP since 1999. The existing OCIP is set to expire on February 1, 2026. Alliant has been the broker and administrator of the Port's program since the Port joined the California State Association of Counties Excess Insurance Authority (CSAC-EIA) OCIP in 2014. CSAC-EIA had previously established their OCIP in 2013, selecting Alliant as the broker and administrator of the program through a competitive bid process. The Port renewed participation in the CSAC-EIA OCIP in 2017, following a competitive process conducted by Alliant proving the CSAC-EIA to still be the best option. Alliant conducted a competitive process in 2020 which resulted in locating a better option outside of CSAC-EIA, thus the Port left the CSAC-EIA program and pursued the better option.

Collateral Posting for Prior OCIPs

The Port has \$38,000 in escrow and \$641,403 in cash collateral posted with Astrus/Chubb for the expiring 2023-2026 and 2020-2023 programs combined, \$75,000 in escrow and \$225,000 in cash collateral posted with Old Republic Insurance Company (Old Republic) for the 2017-2020 OCIP, \$35,000 in escrow posted with Old Republic for the 2014-2017 OCIP, and \$50,000 in escrow posted with Chubb (formerly ACE) for the Port's pre-2014 OCIPs. Collateral posting requirements will remain until Chubb and Old Republic are satisfied that all known and incurred but not reported claims have been settled and the likelihood of new claims diminishes. Collateral amounts are subject to audit and adjustment.

Current Process

Alliant, through a competitive process, solicited quotes for the Port's upcoming OCIP renewal. This process secured three competing quotes for the program's primary workers' compensation and general liability insurance. Of the three, Astrus offered the lowest total rate, with coverage terms comparable to the expiring policies. Astrus also required the least collateral and was the only competitor willing to include projects continuing from the prior program without requiring additional premium. Astrus is a Managing General Underwriter (MGU) issuing policies on behalf of Chubb. Competition in the excess liability insurance placements will continue until close to February to achieve the lowest possible pricing.

The Port's current and proposed OCIP provides the following coverage:

- Workers' Compensation provides statutory coverage for the employees of all Construction Contractors while working on the Port's OCIP covered public works projects.
- General Liability provides third party liability protecting the Port and all Construction Contractors enrolled under the OCIP, including a ten-year tail for products/completed operations.
- Excess Liability provides excess liability limits over general liability, including a ten-year tail for products/completed operations.

OCIP provides the following benefits to the Port:

- The Port's exposure to construction risk is protected by higher liability limits than would generally be available if purchased separately by individual Construction Contractors.
- By providing the required insurance, small businesses have better access to Port construction projects.
- The cost of providing an OCIP is anticipated to be comparable to the insurance costs that would otherwise be passed on to the Port by Construction Contractors if an OCIP were not provided.
- OCIP can be much less expensive if losses are kept to a minimum.

A summary of the proposed OCIP, as well as a comparison to the expiring program, is provided in Table 2:

Table 2
Summary of Key Terms and Comparison with Expiring Program

	Proposed OCIP	Expiring OCIP
Estimated Construction Value	\$298,783,000	\$253,206,000
Broker	Alliant	Alliant
Primary Insurance Carrier	Astrus	Astrus
Expiration Date	February 1, 2029	February 1, 2026
Term	3 Years	3 Years
Workers' Compensation	Statutory	Statutory
General Liability	\$2,000,000 per Occurrence /\$4,000,000 Aggregate	\$2,000,000 per Occurrence /\$4,000,000 Aggregate
Excess Liability	\$150,000,000 per Occurrence and in Aggregate	\$150,000,000 per Occurrence and in Aggregate
Deductible per Occurrence	\$250,000	\$250,000
Maximum Aggregate Claims Liability of the Port ^{1,2}	\$1,750,000	\$1,499,998
Loss Cost Factor (LCF) / Insurer Claims Handling Fee ³	7% of Claims	7% of Claims
Collateral Requirement (see below for additional information)	\$464,743 Added to Prior Collateral	\$641,403
Escrow	Prior Escrow is Sufficient	\$38,000
Fees		
Premium for Primary Coverage ² (A)	\$2,024,687	\$1,773,849
Premium for Excess Coverage ² (B)	\$2,121,418	\$1,836,322
Broker Administrative Services (C) (see below for additional information)	\$597,566	\$506,412
Total Fees (A)+(B)+(C)	\$4,743,671	\$4,116,583
Maximum Aggregate Claims Liability ^{1,2} of the Port including LCF ³	\$1,872,500	\$1,604,998
Total Costs (excludes potential audit adjustment)	\$6,616,171	\$5,721,581

Program rates have decreased for this renewal. Although Table 2 shows a 15% increase in premium, that increase is less than the 18% increase in expected project volume. The

¹ Maximum Aggregate Claims Liability is the Port's maximum out-of-pocket for claims payments, and defense costs for the term of the OCIP.

² The amount is subject to audit adjustment based on actual construction value and/or contractor payroll. For further information, see "Analysis - Audit Adjustment" section of this Agenda Report.

³ The insurer (Astrus) will add 7% to each claim to cover claims handling fees (for example, a \$100,000 claim will cost the Port \$107,000). This amount applies in excess of the \$250,000 per occurrence deductible.

program costs as a percentage of expected project value have dropped from 2.26% to 2.21%. This is due to an overall rate decrease of 2%.

Collateral Requirement for Proposed OCIP

Given that the Port has a \$250,000 deductible per occurrence and maximum aggregate claims liability of \$1,872,500 (with LCF), the OCIP requires a collateral posting by the Port in either the form of cash or a letter of credit, to secure this requirement. Under the proposed OCIP, the additional collateral posting required of the Port is \$464,743. The minimum escrow deposit amount of \$38,000 to provide working funds to pay for claims and expenses within the deductible will be carried over from the prior program. Port cash will be deposited with the primary insurer or their bank until all known and incurred but not reported claims have been settled. The collateral requirement may be adjusted as reported claims have been settled or the likelihood of new claims changes.

Audit Adjustment

As is standard in the OCIP market, the Port's insurance premiums and collateral requirements are based on actual construction values and/or contractor payroll values, and subject to audit adjustments at the conclusion of the program. Premium and collateral amounts will increase if construction value and/or contractor payroll is higher than anticipated. There is no credit to the Port if construction value and/or contractor payroll is less than anticipated.

Broker Administrative Services and Commissions

Under an OCIP, the insurers require a third-party administrator to perform certain duties on their behalf. Alliant has agreed to continue to offer the Port these services for a fee based on a rate of 0.2% of construction value, based on the Port's estimated values. This is the same rate the Port was charged for these services on the expiring program and the program prior to that, and 13% lower than the rate for administrative fees under the 2017-2020 program. Alliant's administrative services include but are not limited to 1. enrolling and on-boarding each Construction Contractor, 2. attending pre-bid and pre-construction meetings, 3. assisting in annual OCIP cost allocations, 4. providing safety standards, recommendations, and occasional site reviews, 5. providing claim advocacy and support including participating in claim reviews, 6. performing monthly payroll tracking, and 7. closing-out contracts. Alliant's administrative services fee will be \$597,566 over the three-year period, subject to actual construction value and/or contractor payroll.

The insurance broker's commissions are included in the insurance premium and dictated by the insurance companies (industry practice). Alliant is expected to receive a broker's commission averaging 9.4% of the Excess Liability premium, for a total of \$188,845.

Intermediary Brokers and Commissions

Alliant will need to utilize intermediary brokers to access some excess insurance carriers as domestic insurance brokers typically cannot place insurance directly through surplus lines insurers nor through London based insurers. Alliant has elected to utilize RT to access surplus lines insurance companies and Pantheon to access London based insurance companies. This is necessary to procure the limits of insurance sought for the Port's OCIP, as such limits are not otherwise available. The intermediary brokers RT and Pantheon are expected to receive an average of 5% of any excess premiums placed through them, as described below, for an anticipated \$39,792.

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.
- ☒ "Common Sense" exemption under CEQA Guidelines Section 15061(b)(3).
- ☐ Other/Notes:

BUDGET

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

Analysis: There is no budget or staffing impact. These costs have been included as part of the Port's Capital Improvement Plan and allocated to project-specific budgets.

STAFFING

- ☒ No Anticipated Staffing Impact.
- ☐ Anticipated Change to Budgeted Headcount.
Reason:
- ☐ Other Anticipated Staffing Impact (e.g., Temp Help).
Reason:

<p><u>MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA):</u></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><u>LIVING WAGE</u> (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><u>SUSTAINABLE OPPORTUNITIES:</u></p> <p><u>Applies?</u> No.</p> <p><u>Reason:</u> Port staff have reviewed the Port’s 2000 Sustainability Policy and did not complete the Sustainability Opportunities Assessment Form. There are no sustainability opportunities related to this proposed action because it does not involve a development project, purchase of equipment, or operation that presents sustainability opportunities.</p>	<p><u>GENERAL PLAN</u> (City Charter § 727):</p> <p><u>Conformity Determination:</u></p> <p>Not Required – 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><u>STRATEGIC PLAN.</u> The proposed action would help the Port achieve the following goal(s) in the Port’s Strategic Plan:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Capture Our Market and Grow the Economic Base <input checked="" type="checkbox"/> Modernize and Upgrade Infrastructure <input checked="" type="checkbox"/> Transition to Zero-Emissions and Build Climate Resilience <input checked="" type="checkbox"/> Maximize Land Use Value and Revenues <input type="checkbox"/> Workforce Training and Jobs Development <input checked="" type="checkbox"/> Create Opportunities for Local Businesses and Community Economic Development 	