



**AGENDA REPORT**

**PROPOSED ACTION:**

**Resolution:** Authorization to Renew the Expiring Port of Oakland Owner Protective Professional Indemnity (“OPPI”) Insurance, Arranged and Paid Through a Prime Insurance Broker for a Five-Year Term and in an Amount Not to Exceed \$800,000

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

**Parties Involved:**

Berkley Assurance Company (Berkley)  
Greenwich CT;  
Indian Harbor Insurance Company (AXA  
XL), Stamford, CT  
*Prime Insurance Broker*  
Alliant Insurance Services (Alliant), Los  
Angeles, CA  
*Intermediary Broker*  
RSG Specialty Insurance Services, LLC  
(RT), Hamilton NJ

**Amount:** Not to Exceed \$800,000

**EXECUTIVE SUMMARY:**

The Port of Oakland (Port) purchases OPPI insurance to cover design errors and omissions related to the Port’s capital improvement projects. This coverage typically covers work performed by architects and engineers. Board authorization is requested to renew the Port’s OPPI insurance policies, expiring on January 1, 2022, as described herein, for a 5-year term expiring January 1, 2027 and for an amount not to exceed \$800,000.

**BACKGROUND & ANALYSIS**

The Port purchases OPPI insurance to protect itself against damages arising from design errors and omissions related to the Port’s capital improvement projects. This coverage typically covers work performed by architecture and engineering consultants. The Port’s current policies are scheduled to expire on January 1, 2022. Under the expiring program, the Port has \$35 million of OPPI coverage. Before the insurance pays on a claim, a claim must be made against the consultants’ insurance. In the event a consultant’s insurance does not pay the claim, there is a \$100,000 self-insured retention (similar to a deductible) before the OPPI will begin to pay a claim. While losses under this coverage have been rare, the Port purchases OPPI for protection from catastrophic losses.

Staff was able to secure renewed OPPI policies with favorable terms and pricing through a competitive bid process conducted by the prime insurance broker, Alliant, and

intermediary broker, RT. These brokers solicited quotes from 10 insurance companies, and ultimately achieved several improvements over the expiring policies. The proposed combined policy limit is the same \$35 million for a similar premium, \$665,343, including taxes and fees. A more detailed comparison of the proposed policies with the expiring program is provided in Table 1 below.

**Table 1 - Summary of Key Terms**

	<b>Expiring</b>	<b>Proposed Renewal</b>
Primary Insurance Policy	AXA XL	Berkley
Excess Insurance Policy	Berkley	AXA XL
Policy Period	1/1/2017 - 1/1/2022	1/1/2022 - 1/1/2027
Term	5 Years	5 Years
Retroactive Date	9/1/2008	9/1/2008
Estimated Construction Value (A)	\$298,254,000	\$252,611,000
Limits	\$35,000,000	\$35,000,000
Defense Expense	\$1,000,000 in defense outside the limits of liability applies to Coverage A. Financial Loss. Once limit is exhausted, defense costs begin to erode the primary limit.	\$1,000,000 in defense outside the limits of liability applies to Coverage A. Financial Loss. Once limit is exhausted, defense costs begin to erode the primary limit.
Self-Insured Retention	\$100,000 Financial Loss \$0 Protective Loss	\$100,000 Financial Loss \$0 Protective Loss
Minimum Insurance Requirement	\$1,000,000 for projects < \$50M \$2,000,000 for projects >\$50M	\$1,000,000
Extended Reporting Period	3.5 Years, up until 7/6/2025 for primary policy / 5 years for Excess Policy which will drop down	10 Years
Premium	\$643,691	\$644,400
S/L Taxes & Fees	\$20,598	\$20,943
Total (B)	\$664,289	\$665,343
Premium Variance	n/a	0.2%
Comparison Rate ( $B \div A \times 1,000$ )	\$2.23	\$2.63

The proposed program has several improvements over the expiring program. The most significant of these are as follows:

1. The proposed program provides a much longer extended reporting period, now increased to 10 years. This is significant as the extended reporting period is the amount of time the Port would have to file a claim under these policies. The statute of repose (the window of time in which suit can be brought) for latent construction defects is 10 years in California, making this longer extended reporting period very advantageous.
2. The proposed program provides a Non-negligence based OPPI insuring agreement. Claims due to errors that are not severe enough to be considered negligent, could now be covered under the proposed policies.
3. The proposed program provides excess and difference in conditions coverage, which means the program would drop down and cover a claim even if the underlying professional liability insurance does not provide coverage.
4. Margin clause increased from 10% to 15%. Total 5-year CIP construction values would have to exceed estimate by 15% before the Port would be obligated to pay additional premium.

The proposed program was not the least expensive option presented to the Port, but it was the only option with all of these key enhancements, and at only \$60,000 (9%) more than the least expensive, it was the best overall value.

#### 1. Port Insurance Brokers

As described below, the Port purchases construction related insurance through one of its prime insurance brokers, Alliant Insurance Services, Inc., Los Angeles:

##### *a. Broker Commissions*

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 of 12.5% of the premium, for a total of \$80,550. The intermediary broker RT is expected to receive a commission of 10% of premiums placed through them, as described below, for an amount totaling \$64,440.

##### *b. Intermediary Broker*

Alliant needs to utilize an intermediary broker to access some insurance companies as domestic insurance brokers typically cannot place insurance directly through surplus lines insurers. Insurance purchasers also typically cannot purchase insurance directly from these intermediary brokers. Alliant has elected to utilize RT to access surplus lines insurance companies. This is necessary to procure an OPPI program with the most favorable terms for the premium.

## 2. Not-to-Exceed Proposed Authorization

The not-to-exceed authorization amount requested is for \$800,000. This takes into account the total costs as outlined in Table 1 of \$665,343 plus an approximate 20% contingency to allow for audit adjustments at the conclusion of the term of this program and potentially higher insurance premiums at the time pricing is locked-in (very close to policy effective date). This contingency is requested and believed to be prudent as Port Staff has produced the lowest construction contract value estimate of the past three renewal cycles. While Port Staff is confident in this estimate, a leaner construction estimate does run a greater possibility of additional costs at audit (if construction values are higher). In addition, this contingency amount covers the possibility that the insurance premiums could change between the date of this Agenda Report and the date that the insurance premiums are locked-in. As is customary in the insurance market, the pricing is not locked-in until very close to the insurance policy effective date and is subject to changes in the global insurance market. The policy terms are also subject to minor adjustments. All insurance policies and related documents are subject to the Port Attorney's review and approval as to form and legality.

## 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.

- Exempt from CEQA because it is not a "Project" under CEQA Guidelines Section 15061(b)(3).

- Other:

Reason:

### BUDGET

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

Operating

Non-Operating

Capital

**Analysis:** The insurance premium is included in the Port's Capital Budget, as part of project-specific budgets. The insurance premium for a 5-year policy as described above, is anticipated to be \$665,343. The premiums and terms leading up to the renewal date are subject to change based on global and local events impacting the insurance market up until the insurance policy renews on January 1, 2022. While no such events are currently known or expected, Board authorization is being requested in an amount not to exceed \$800,000.

Alliant and RT are paid commissions of 12.5% and 10% respectively, which is included in the insurance premium (industry practice). The total commission is expected to be 144,990, depending on the premium at binding.

### 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> 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, purchasing of equipment, or operations that presents sustainability opportunities.</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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