AGENDA REPORT

Resolution Authorization to Renew the Owner Controlled Insurance Program (“OCIP”) Arranged and Paid Through a Prime Insurance Broker for a Three-Year Term and in an Amount Not to Exceed $5,900,000 Plus Posting of $38,000 Escrow and $387,166 in Collateral (subject to audit adjustment) and Related Actions.**Finance & Administration**

MEETING DATE:	12/12/2019
AMOUNT:	Not to Exceed $5,900,000 Plus posting of $38,000 Escrow and $387,166 in Collateral (subject to audit adjustment) Capital Expenditure
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* TBD – See Table 1 for list of potential excess carriers *Prime Insurance Broker* Alliant Insurance Services (“Alliant”), Los Angeles, CA *Intermediary Brokers* CRC Insurance Services (“CRC”), Redondo Beach, CA Alesco Risk Management Services (“Alesco”), London, UK
SUBMITTED BY:	Sara Lee, Chief Financial Officer
APPROVED BY:	Danny Wan, Executive Director
ACTION TYPE:	Resolution

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, 2020. Port staff seeks authorization to renew the OCIP program for a three-year term ending on February 1, 2023 as described in this Agenda Report. The recommended coverage is materially the same as the expiring policy.

Table 1: Potential OCIP Excess Insurance Carriers

It is anticipated that approximately 20 excess insurance carriers will ultimately participate in order to provide the $300 million excess liability coverage.

Excess Carriers	
Allied World Assurance Company	New York, NY
Chubb Indemnity Insurance Company	New York, NY
Axis Insurance Company	New York, NY
Berkley Insurance Company	Greenwich, CT
Berkshire Specialty Insurance Company	Omaha, NE
Ascot Specialty Insurance Company	Pembroke, Bermuda
SCOR Reinsurance Company	New York, NY
Navigators Insurance Company	Hartford, CT
Houston Casualty Company (Tokio Marine)	Houston, TX
Sompo America Insurance Company	New York, NY
Lexington Insurance Company	Boston, MA
Liberty Insurance Underwriters Inc	Boston, MA
Underwriters at Lloyds of London	London, UK
Travelers Casualty Company	New York, NY
Allianz Underwriters Insurance Company	Burbank, CA
Swiss Re International SE	New York, NY
AmTrust International Insurance Ltd	New York, NY
Ategrity Specialty Insurance Company	Scottsdale, AZ
Everest Indemnity Insurance Company	Liberty Corner, NJ
First Mercury Insurance Company	Southfield, MI
Great American Casualty Insurance Company	Cincinnati, OH
Markel Insurance Company	Glen Allen, VA
Nationwide Insurance Company of America	Grandview Heights, OH
Starr Indemnity & Liability Company	New York, NY
Westchester Surplus Lines Insurance Company	Alpharetta, GA

BACKGROUND

The Port of Oakland's ("Port") Owner Controlled Insurance Program ("OCIP") provides workers' compensation, general liability and excess liability insurance protection for enrolled contractors and sub-contractors involved in Capital Improvement Plan ("CIP") construction projects ("Construction Contractors"). The Port has had an OCIP since 1999. The expiring OCIP, offered through the California State Association of Counties Excess Insurance Authority ("CSAC-EIA") is set to expire on February 1, 2020. The Port joined the CSAC-EIA OCIP in 2014 and renewed its participation in the CSAC-EIA OCIP in 2017. CSAC-EIA had previously established their OCIP in 2013, selecting Alliant Insurance Services ("Alliant") as the broker and administrator of the program and selecting Old Republic Insurance Company ("Old Republic") as the primary insurance carrier through competitive bid processes.

Collateral Posting for Prior OCIP

The Port has $2,500,000 in cash collateral posted with Chubb (formerly ACE) for the Port's pre-2014 OCIPs and $899,300 in cash collateral posted with Old Republic for the Port's expiring OCIP (2017-2020). These collateral amounts are currently under review, and both amounts are expected to be reduced. 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.

ANALYSIS

Alliant, through a competitive process, solicited quotes for the Port's upcoming OCIP renewal. Astrus Insurance Solutions, LLC ("Astrus") offered the lowest rate, with terms comparable to the expiring policies. Astrus is a Managing General Underwriter ("MGU") issuing policies on behalf of Federal Insurance Company and Executive Risk Indemnity Incorporated (collectively "Chubb").

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 covered public works projects.
- General Liability ($2 million each occurrence/$4 million aggregate)
    - 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 ($300 million each occurrence/$300 million aggregate)
    - 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 cost of providing an OCIP is anticipated to be lower than the insurance costs that would otherwise be passed on to the Port by Construction Contractors if an OCIP were not provided. A lower cost is possible through an OCIP because Construction Contractors share the same OCIP insurance limit and all claims are processed through one insurance program.
- 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.

A summary of the proposed OCIP, as well as a comparison to the expiring program, is provided in the table on the following page:

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Table 2: Summary of Key Terms and Comparison with Expiring Program

	Proposed OCIP	Expiring OCIP
Estimated Construction Value	$225,091,000	$235,130,000
Broker	Alliant	CSAC-EIA (through Alliant)
Primary Insurance Carrier	Astrus	Old Republic
Expiration Date	February 1, 2023	February 1, 2020
Term	3 Years	3 Years
Workers' Compensation	Statutory	Statutory
General Liability	$2 million each occurrence /$4 million aggregate	$2 million each occurrence /$4 million aggregate
Excess Liability	$300 million each occurrence /$300 million aggregate	$300 million each occurrence /$300 million aggregate
Deductible per Occurrence	$250,000	$250,000
Maximum Aggregate Claims Liability of the Port[1,2]	$1,501,096	$1,441,545
Loss Cost Factor ("LCF") / Insurer Claims Handling Fee[3]	7% of claims	7% of claims
Collateral Requirement (see below for additional information)	$387,166	$899,300
Escrow	$38,000	$75,000
Fees		
Premium for Primary Coverage[2] (A)	$1,054,071	$1,294,071
Premium for Excess Coverage[2] (B)	$2,240,842	$1,294,881
Broker Administrative Services (C) (see below for additional information)	$450,062	$531,618
Total Fees (A)+(B)+(C)	**$3,744,975**	**$3,120,570**
Maximum Aggregate Claims Liability[1,2] of the Port including LCF[3]	$1,606,172	$1,542,453
Total Costs (excl. potential audit adjustment)	**$5,351,147**	**$4,663,023**

The combined OCIP premium and administrative services costs reflects an annual three-year increase of approximately 4.9%, or in aggregate 14.8%. The higher price reflects general increases in Consumer Price Index (CPI) and construction costs, as well as a

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.

general tightening of the insurance market resulting from the catastrophic natural disasters of recent years and large liability settlements across the insurance industry.

Collateral Requirement

The OCIP requires a collateral posting by the Port in either the form of cash or a letter of credit, to secure the $250,000 deductible per occurrence and maximum aggregate claims liability of approximately $1.6 million. Under the proposed OCIP, the required collateral posting requirement of the Port is $387,166 plus an escrow deposit amount of $38,000 to provide working funds to pay for claims and expenses within the deductible. 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 offer the Port the same approach to fees as followed under the expiring CSAC-EIA OCIP, less the portion previously retained by the CSAC-EIA, which was 0.03% of construction value. This results in an administrative services fee based on a rate of 0.2% of construction value. Alliant's administrative services include, but are not limited to: enrolling and on-boarding each Construction Contractor; attending pre-bid and pre-construction meetings; performing annual OCIP cost allocations; providing safety standards, recommendations and occasional site reviews; performing monthly payroll tracking; and closing-out contracts. Alliant's administrative services fee is estimated to be $450,062 over the three-year period, but 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 8.5% of the excess liability premium, for a total of $190,472. The intermediary brokers CRC and Alesco are expected to receive an average of 5% of any excess premiums placed through them, as described below, for an amount totaling $80,027.

Intermediary Brokers

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 CRC Insurance Services ("CRC") to access surplus lines insurance companies and Alesco Risk Management Services ("Alesco") 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.

Not-to-Exceed Proposed Authorization

The not-to-exceed authorization amount requested is for $5.9 million. This takes into account the total costs as outlined in Table 2 of $5,351,147 plus an approximate 10% contingency to allow for audit adjustments at the conclusion of the term of this policy 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.

BUDGET & STAFFING

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.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The matters contained in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan (http://www.portofoakland.com/pdf/about/strategicPlan2011-2015.pdf)

- Goal A: Objective 1: Maximize the use of existing assets.
- Goal B: Objective 1: Retain existing customers and tenants.

LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply because the requested action is not an agreement, contract, lease, or request to provide financial assistance within the meaning of the Living Wage Regulations.

ENVIRONMENTAL

CEQA Determination: This action was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA). The CEQA Guidelines, Section 15061(b)(3) ("common sense exemption") states that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Renewing the OCIP for a three-year term will not have a significant effect on the environment and therefore is not a project under CEQA. No further environmental review is required.

GENERAL PLAN

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

This action is not subject to the Port's Owner Controlled Insurance Program (OCIP) as it is not a capital improvement construction project.

OPTIONS

Option 1 (Recommended Option):

- Authorize the Executive Director to renew the Port's Owner Controlled Insurance Program ("OCIP") as outlined in this Agenda Report, subject to minor adjustments, and subject to approval of the Port Attorney as to form and legality.
- Authorize not-to-exceed OCIP costs of $5.9 million for a three-year term expiring February 1, 2023 to pay for insurance premiums, administrative services, OCIP claims, claims handling and any audit adjustments.
- Deposit $387,166 in collateral and $38,000 in escrow with Astrus/Chubb or a bank selected by Astrus/Chubb to satisfy collateral requirement.
- Authorize Port Risk Manager to execute any agreements and incidental documents necessary to renew the OCIP and related insurance policies, and subject to approval of the Port Attorney as to form and legality.

Option 2: Authorize renewal of the OCIP with adjustments, as mutually agreed to by the insurance carriers, as the Board may request.

RECOMMENDATION

Port staff recommends Option 1.

- Authorize the Executive Director to renew the Port's Owner Controlled Insurance Program ("OCIP") as outlined in this Agenda Report, subject to minor adjustments, and subject to approval of the Port Attorney as to form and legality.
- Authorize not-to-exceed OCIP costs of $5.9 million for a three-year term expiring February 1, 2023 to pay for insurance premiums, administrative services, OCIP claims, claims handling and any audit adjustments.
- Deposit $387,166 in collateral and $38,000 in escrow with Astrus/Chubb or a bank selected by Astrus/Chubb to satisfy collateral requirement.
- Authorize Port Risk Manager to execute any agreements and incidental documents necessary to renew the OCIP and related insurance policies, and subject to approval of the Port Attorney as to form and legality.