



Legislation Text

File #: 21-0729, Version: 1

REQUEST FOR CITY COUNCIL AND CORONA UTILITY AUTHORITY ACTION

DATE: 07/21/21

TO: Honorable Mayor and City Council Members
Honorable President and Board

FROM: Legal & Risk Management

SUBJECT:

City Council and Corona Utility Authority consideration and ratification of slight changes in Enhanced Pollution Liability and Excess Cyber Liability Insurance Policies approved on July 16, 2021 for Fiscal Year 2022.

EXECUTIVE SUMMARY:

Each year the City purchases at least eight insurance policies/programs to help mitigate the more common risks associated with the operation of the municipal organization. On June 16, 2021, the City Council approved the purchase of the needed insurance policies for Fiscal Year (FY) 2022 **(Please See Exhibit "1" Attached Hereto)** ("06-16-21 Agenda Report"). As discussed in the 06-16-21 Agenda Report, due to the very difficult nature of the insurance market this year, the City's broker, Alliant, was unable to secure final, binding quotes for a few City policies, including the Enhanced Pollution Liability and Excess Cyber Liability policies. To address this, staff provided estimated not to exceed amounts for such policies, and the City Council delegated authority to staff to review the final quotes and bind the City as appropriate. However, although staff could have secured Enhanced Pollution Liability and Excess Cyber Liability insurance within the estimated amounts, the policies themselves changed due to uncontrollable market forces, and staff chose to bind the City to policies different than those described. While the Enhanced Pollution Liability policy is more expensive than previously estimated, it is a much better policy in critical ways. With respect to the Excess Cyber Liability insurance, it will now be carried through a pool and will be less expensive than previously estimated. Tonight, staff is returning to the City Council to discuss the differences and to seek the Council's ratification of the Enhanced Pollution Liability and Excess Cyber Liability policies chosen by staff.

RECOMMENDED ACTION:

That the:

- a. City Council ratify the purchase of an enhanced pollution liability insurance policy with Ironshore Specialty Insurance Company for Fiscal Year 2022, with a premium amount of **\$117,878.46** (previously estimated to be \$71,177), coverage of \$10,000,000 per pollution condition, and a general Self-Insured Retention of \$250,000 per pollution condition.
- b. City Council ratify the purchase of an excess Cyber Liability insurance policy with Alliant's Shared Excess Program for FY 2022, with a premium amount between **\$17,000 and \$47,000** depending upon the number of members who purchase (previously estimated to be \$50,616) and coverage of \$2,000,000 in excess of the Cyber Liability coverage included in our Alliant Property Insurance Program ("APIP") policy.
- c. Pursuant to [Corona Municipal Code Section 3.08.140\(E\)](#), find that it is in the best interest of the City and its administrative operations to dispense with the City's normal formal competitive bidding process and authorize the above purchases using Alliant's competitive process, since the City's competitive bidding process is not amenable to the purchase of these insurance policies and Alliant's competitive process is a thorough and competitive which is an appropriate alternative to the City's formal public competitive bidding procedures.
- d. City Council authorize the City Manager and Finance Director to increase the Fiscal Year 2022 budget adopted for the General Liability Fund (#68720120) based upon the final premium amounts.
- e. City Council authorize staff to take all other actions and execute all documents necessary to implement these recommendations, including any minor adjustments which are consistent with these recommendations and within the finally adopted FY 2022 budget for the General Liability Fund (#68720120).
- f. Corona Utility Authority review, ratify and to the extent necessary direct the City Council to take the above actions.

BACKGROUND & HISTORY:

Discussed below and in the 06-21-21 Agenda Report.

ANALYSIS:

A. BASIS FOR EXCEPTION TO COMPETITIVE BIDDING

See discussion in the 06-16-21 Agenda Report.

B. UNUSUALLY HARD & EXPENSIVE INSURANCE MARKET

See discussion in the 06-16-21 Agenda Report.

C. RECOMMENDED INSURANCE COVERAGES

1. Enhanced Pollution Liability

In the 06-16-21 Agenda Report, we indicated that the Enhanced Pollution insurance was proposed to be renewed with Illinois Union/Chubb ("Illinois Union"), in part due to its inclusion of regulatory penalty and fine coverage not typically found elsewhere, with coverage of \$10M per pollution condition, with an SIR of \$25,000 per pollution condition, and with a premium estimated not to exceed \$71,177 per year for a three-year program (FY 2022 through 2024).

However, once the final binding quote came in, the following three substantive differences were included by the insurer:

- a. The policy was a 1-year policy instead of 3 years;
- b. The annual premium increased to \$85,472; and
- c. Most significantly, the insurer refused to continue to provide "products" coverage, meaning that the City would have no coverage for claims related to the water served to DWP's customers.

The loss of the "products" coverage was deemed by staff to be significant enough that we asked Alliant to seek for another alternative, though we doubted that coverage for both regulatory penalties/fines and "products" could be provided by any insurer. However, Alliant was able to obtain a quote from Ironshore Specialty Insurance Company which includes "products" coverage, as well as regulatory fines/penalties.

Please See Exhibit "2" Attached Hereto: It provides a summary of the differences between the policies offered by Illinois Union and Ironshore. While in some ways the Ironshore policy is not as broad or "good" as Illinois Union (colored in red), in some ways the new policy provided by Ironshore is even better than Illinois Union (colored in green). The coverage provisions which are essentially "equal" with the two policies are colored in yellow.

Although the premium quoted by Ironshore was \$117,879, which was more than the estimate discussed in the 06-16-21 Agenda Report, staff needed to bind before the end of the fiscal year in order not to go "bare" on coverage. Accordingly, the City Attorney/LRM Director determined that this new policy was ultimately the best decision for the City and committed to binding the policy. Staff are therefore seeking the City Council's ratification of that decision. If for some reason the City Council disagrees, Staff can terminate the policy and seek an alternative course of action, including proceeding without enhanced pollution coverage.

2. Excess Cyber Liability

In the 06-16-21 Agenda Report, staff indicated that the Excess Cyber Liability insurance was expected to be renewed with Axis Insurance Company, with coverage of \$3M in excess of the \$2M cyber liability coverage included on the City's APIP property policy and with a premium of up to

\$50,616 (a 100% increase over last year).

However, in the end - like many other insurers have chosen to do recently - Axis Insurance Company chose to no longer offer this cyber coverage. Accordingly, since we risked being without this coverage, staff asked Alliant to seek other alternatives for the City to consider. Ultimately, Alliant was able to present the City with two basic alternatives for true "excess" cyber coverage:

OPTION #1 - IRONSHORE

- Option A - \$2M limit (exclude ransomware); annual premium = \$103,250
- Option B - \$2M limit (exclude eCrime); annual premium = \$129,063
- Option C - \$2M limit (enhanced option with sub-limits); premium = \$154,875

OPTION #2 - ALLIANT SHARED EXCESS PROGRAM

- Newly devised program due to vanishing private market
- \$2M limit (\$7.5M program limit)
- Premium dependent upon number of new participants (\$17K if 140 join and
- \$47K if 40 join - we are likely to be closer to the \$47K amount)

Although the Alliant Shared Excess Program carries an aggregate program limit of \$7.5M (thus shared amongst potentially dozens or a few hundred participants), staff considers this to be a much more valuable policy when looking at it from a cost-benefit approach. The highest dollar risk appears to us to be in the ransomware area, and each policy carries smaller sub-limits for such coverage in any event, if they cover ransomware at all. For instance, the City's expired policy and the Alliant Shared Excess Program cover only up to \$250,000 for such incidents, whereas while Ironshore's policy covers \$750,000 in ransomware it does so only if the City purchases the most expensive Option C (otherwise they provide no coverage). Paying in excess of \$150,000 per year for such coverage does not seem financially wise.

\$1M or more in standalone ransomware coverage might be obtainable, with premiums of between \$50K - \$75K, but the City also might be required to purchase very expensive software for added protection (one Alliant client was apparently quoted \$2M just for Trident End Point Protection software). IT Staff does not believe that such a requirement would apply to the City, as it already has similar robust software protections, but staff will need to investigate further. Some carriers likely require the use of their preferred software.

Staff might rather recommend that the City Council self-insure for such ransomware incidents by putting away money in an interest-bearing account. On the other hand, the City may be reluctant to advertise such preparation and become a target.

Please know that staff will be looking much more closely at all of the pros and cons of carrying excess cyber liability coverage over the next year, and staff will return to the City Council with a detailed analysis and discussion before the City purchases insurance for FY 2023.

Please See Exhibit "3" Attached Hereto: It provides a summary of the differences between the

canceled excess policy from Axis and the Alliant Shared Excess Program, as well as the restrictive changes in the “first level” cyber coverage within the APIP property insurance policy (which is again indicative of the very hard insurance market, particularly with cyber coverage).

FINANCIAL IMPACT:

Sufficient funds to purchase the recommended insurance policies are included in the FY 2022 operational budgets or will be pursuant to the above recommended actions.

ENVIRONMENTAL ANALYSIS:

This action is exempt pursuant to Section 15061(b)(3) of the Guidelines for the California Environmental Quality Act (CEQA), which states that a project is exempt from CEQA if the activity is covered by the commonsense exemption that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. This action is strictly an action to purchase City Liability, Property and Workers’ Compensation Insurance Policies, and there is no possibility that adopting this resolution will have a significant effect on the environment. Therefore, no environmental analysis is required.

PREPARED BY: MARIA CONZELMAN, SR. PARALEGAL & CLAIMS MANAGER

REVIEWED BY: DEAN DERLETH, CITY ATTORNEY/LRM DIRECTOR

Attachments:

1. Exhibit “1” - 06-16-21 Agenda Report (w/out attachments)
2. Exhibit “2” - Comparison - Enhanced Pollution Insurance
3. Exhibit “3” - Comparison - Excess Cyber Insurance