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**Title:** CONSIDER A CONTRACTOR POLLUTION LIABILITY POLICY WITH ALLIANZ WITH A LIMIT OF \$5,000,000 AT A PREMIUM NOT TO EXCEED \$52,250 PLUS SURPLUS LINES TAXES AND STAMPING FEES PROCURED THROUGH MARSH USA, INC.; AND AUTHORIZE THE EXECUTIVE DIRECTOR TO BIND THE POLICY

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12/4/2023	1	Carson Reclamation Authority		

**Report to Carson Reclamation Authority**

Monday, December 04, 2023

Discussion

**SUBJECT:**

**CONSIDER A CONTRACTOR POLLUTION LIABILITY POLICY WITH ALLIANZ WITH A LIMIT OF \$5,000,000 AT A PREMIUM NOT TO EXCEED \$52,250 PLUS SURPLUS LINES TAXES AND STAMPING FEES PROCURED THROUGH MARSH USA, INC.; AND AUTHORIZE THE EXECUTIVE DIRECTOR TO BIND THE POLICY**

**I. SUMMARY**

When the Tokio Marine Contractors Pollution/Professional Liability (“CPL/PLI”) program expired on December 21, 2022, the CRA obtained narrower but dedicated coverage for conditions that are created or exacerbated as a result of the O&M being performed by WSP (the O&M contractor) onsite. The 2016 Tokio Marine policy was unable to be extend and the CRA wouldn’t have wanted to continue the policy under its then-current terms. The original policy cost more than \$3,000,000, though 40% was paid for by CAM-Carson, LLC. This new program was designed to respond in excess of valid and collectible insurance afforded by WSP’s CPL program.

This bridge-period coverage was structured for one year, with the intention that the developer(s) will take over this obligation and coverage when development work begins as they obtain CPL coverage as required under their Insurance Administration Agreements

with the CRA. That year has passed and the CRA is still in the position of needing a bridge policy until at least Carson Goose Owner, LLC is ready to close on their insurance programs in Q1 2024.

The CPL program quoted complements the robust Pollution Legal Liability (“PLL”) program tower lead by Beazley by providing affirmative coverage for the activities/operation of the systems and the exacerbation of existing conditions.

Marsh recommends selection of the quoted Allianz program (as shown in the proposal in Exhibit 1), as this option is afforded on an Occurrence form, eliminating the need for Extended Reporting Period (“ERP”) coverage to be purchased upon expiration. Allianz also agreed to affirmatively manuscript their program for the exacerbation coverage the CRA requested.

Limits of liability are quoted with \$5,000,000 each incident and a \$5,000,000 policy aggregate, in excess of a \$50,000 self-insured retention.

The proposed insurance carrier is Allianz and the premium is \$52,250, which includes the broker commission. The policy is being offered through Allianz’ Surplus Lines Carrier, Fireman’s Fund Indemnity Corporation (AM Best: “A+ XV” rating). There is also an estimated additional cost of \$1,698.13 for Surplus Lines Taxes and Stamping Fees, based on 2022’s cost.

## II. RECOMMENDATION

1. **APPROVE** A CONTRACTOR’S POLLUTION LIABILITY INSURANCE POLICY WITH ALLIANZ WITH A LIMIT OF \$5,000,000 AT A PREMIUM NOT TO EXCEED \$52,250 PLUS SURPLUS LINES TAXES AND STAMPING FEES ESTIMATED IN THE AMOUNT OF \$1,698.13, PROCURED AND PAYABLE THROUGH MARSH USA, INC.
2. **AUTHORIZE** the Executive Director of the CRA to bind the Policy.

## III. ALTERNATIVES

1. **TAKE** another action the Board deems appropriate.

## IV. BACKGROUND

CPL is a contractor-based policy, typically offered on a claims-made basis, that provides third-party coverage for bodily injury, property damage, defense, and first party coverage for cleanup as a result of pollution conditions (sudden/accidental and gradual) arising from contracting operations performed by or on behalf of a contractor party. Professional Liability Insurance (“PLI”) covers contractors’ and subcontractors’ professional work (i.e. design work).

In 2015 the CRA renewed the existing CPL Policy originally procured in 2007 by Carson Marketplace and renewed annually, effective 12/21/2007 to 12/21/2015, made through ACE American Insurance Co. (the “Pre-Development CPL”). The Predevelopment CPL

was renewed again in 2016.

On November 1, 2016 the CRA Board approved a voluntary termination and release of liability with environmental contractor Tetra Tech (“TT”) in order to accommodate the Phased Development of the Site. CRA and TT executed a Termination and Release Agreement on November 14, 2016 and the Confirmation of Termination in January, 2017.

In December 2017 the CRA approved the renewal of a required CPL/PLI Policy for a period of four additional years and with an increased aggregate limit of liability of \$50,000,000 per incident and in the aggregate for pollution conditions resulting from contracting operations of CPL and \$25,000,000 of PLI per incident and in the aggregate for professional services contracted directly with RE|Solutions, LLC (“RES”) or CRA, with both coverages subject to a self-insured retention of \$500,000 per incident and a policy term through and including December 21, 2022.

The 2017 CPL/PLI program had a retroactive date of December 31, 2007 for all coverages (the date TT first began design work on the site). The CPL/PLI also contained at least 10 years of “completed operations” coverage.

All contractors and subcontractors performing construction (including installation of remedial systems, building protection systems, foundation systems, sub-foundation systems, performance of site grading, infrastructure improvements and construction of vertical improvements) on the Project were listed as an insured on the CPL/PLI program with respect to the CPL/PLI and had the unrestricted ability to make a claim under the CPL/PLI program. The City was also named as an insured under the Development CPL/PLI. Coverage also included new designers and contractors that performed work on both the CAM and Carson Goose Owner (“CGO”) projects through the life of the policy (until December 2022).

This 2017 Tokio Marine policy was for a total term of six years (commencing at the inception in 2016), or until December 21, 2022, at a Net Premium Total for the \$50/25 million priced at \$2,660,043 for the entire term, plus an estimated Surplus Lines Tax and Stamping Fee of 3.2% (\$85,121) and brokerage fees an additional \$300,000, for a grand total of \$3,045,164. CAM Carson, LLC paid for 40% of the cost of the program.

The replacement CPL first approved in 2022 (with no PLI) was substantially less in terms of limit and premium, with a recommended limit of \$5,000,000 and a premium of \$52,250. The premium this year is the same as last year’s, \$52,250. Since the CRA is no longer performing construction work on the site and is only doing O&M activities, the coverage is intended to sit as excess CPL coverage above WSP’s coverage. When either or both CAM and CGO commence intrusive work on the site (e.g. grading, drilling, or construction) they will be required to cover the CRA under their own (separate or joint) CPL policies for their cells under the terms of the Insurance Administration Agreement approved by the CRA and the City. These policies will be at higher limits than the current \$5,000,000.

## **V. FISCAL IMPACT**

The premium for the CPL is \$52,250 plus Surplus Lines Taxes and Stamping Fees estimated in the amount of \$1,698.13.

**VI. EXHIBITS**

1. CPL Insurance Renewal Summary from Marsh (pgs. 4-33)

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