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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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**Attachments:** 1. CRA Landfill O&M Excess-DIC CPL Proposal 2022 v3

Date	Ver.	Action By	Action	Result
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**Report to Carson Reclamation Authority**

Monday, December 05, 2022

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**

With the Tokio Marine Contractors Pollution/Professional Liability (“CPL/PLI”) program set to expire on December 21, 2022, the objective of this renewal program is to secure dedicated coverage for CRA 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 cannot be and the CRA does not wish to extend the policy under the current terms. The original policy cost more than \$3,000,000, though 40% was paid for by CAM-Carson, LLC. This new program is designed to respond in excess of valid and collectible insurance afforded by the WSP program.

This bridge-period coverage is 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.

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, Interstate Fire & Casualty Company (AM Best: A+ XV rating). There is also an additional cost of \$1,698.13 for Surplus Lines Taxes and Stamping Fees.

## 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 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. It was. 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 considered today (with no PLI) is substantially less in terms of limit and premium, with a recommended limit of \$5,000,000 and a premium of \$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.

### **New Terms**

Highlights to the new CPL policy are outlined below.

- The program has changed from a claims-made to occurrence form - the benefit here is that the bridge-period coverage will remain in place and the CRA will not need to procure an ERP at the conclusion of the one-year policy term. Allianz is charging additional premium for this coverage, but the benefit of not needing to purchase ERP

outweighs this additional upfront cost and is recommended moving forward.

- If the CRA elects to purchase the optional TRIA coverage, the cost would be an additional 3%.
- Broad named insured wording was added, inclusive of blanket additional insured: the 4 Additional Named Insureds (in addition to the City, the Successor Agency, Housing Authority and the two CFDs were added by endorsement).
- Covered operations definition/scope updated to specifically outline the Tasks 1 through 6 of the WSP scope of work are covered on this program.
- Other insurance: primary and non-contributory, except excess/DIC to coverage from WSP when valid & collectible.
- Emergency response timeframe expanded to 14 days for incurred & reported costs (from 96 hours incurred/10 days reported).
- Responsible Insured definition refined to manager responsible for environmental affairs and D&Os.
- Pollutant definition expanded to include silt/sedimentation.
- Environmental law definition amended to include voluntary clean-up programs.

## **V. FISCAL IMPACT**

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

## **VI. EXHIBITS**

1. CPL Insurance Renewal Summary from Marsh (pgs. 5-15)

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