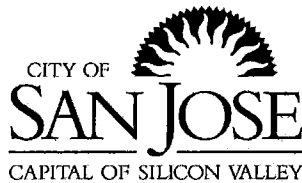


7.1 Procurement of Insurance Products for an Owner Controlled Insurance Program for the San Jos -Santa Clara Regional Wastewater Facility.



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Julia H. Cooper
Kerrie Romanow
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: May 31, 2017

Approved

D. D. Syl

Date

6/5/17

**SUBJECT: REPORT ON PROCUREMENT OF INSURANCE PRODUCTS FOR AN
OWNER CONTROLLED INSURANCE PROGRAM FOR THE SAN JOSE-
SANTA CLARA REGIONAL WASTEWATER FACILITY**

RECOMMENDATION

Adopt a resolution authorizing the Director of Finance to:

- (a) Purchase insurance policies for the San José-Santa Clara Regional Wastewater Facility Capital Improvement Program with total cost not to exceed \$10,810,576 including estimated insurance premiums of \$8,153,181 and a cash collateral fund of \$2,657,395, to be paid in five annual installments and subject to the annual appropriation of funds, as follows:
 - (1) Old Republic General Insurance Corporation: Commercial General Liability Insurance and Workers' Compensation Insurance with a Program Agreement Endorsement stipulating terms of the cash collateral fund management
 - (2) Allied World Assurance Company: Commercial Excess Liability Insurance
 - (3) Endurance Risk Solutions Assurance Company: Commercial Excess Liability Insurance
 - (4) Ironshore Specialty Insurance Company: Commercial Excess Liability Insurance
 - (5) American Fire and Casualty Company: Commercial Excess Liability Insurance
 - (6) Liberty Mutual Fire Insurance Company: Builder's Risk Insurance with special endorsement for Flood
 - (7) Ironshore Specialty Insurance Company: Contractors Pollution Liability Insurance
 - (8) Owners Protective Professional Liability Insurance with the insurance carrier to be determined pending the City's completion of the application process.
- (b) Adopt the following 2016-2017 Appropriation Ordinance Amendments in the San José-Santa Clara Treatment Plant Capital Fund:
 - (1) Decrease the Preliminary Engineering appropriation to the Environmental Services Department by \$700,000;
 - (2) Decrease the Program Management appropriation to the Environmental Services Department by \$2,500,000; and
 - (3) Establish the Owner Controlled Insurance Program appropriation to the Environmental Services Department in the amount of \$3,200,000.

OUTCOME

Implementation of a multiline owner controlled insurance program (OCIP) for Capital Improvement Program (CIP) projects to be performed at the San José-Santa Clara Regional Wastewater Facility (RWF) will increase program savings and enhance safety, risk, and claims management services.

EXECUTIVE SUMMARY

An OCIP provides a centralized insurance program for losses associated with onsite construction of CIP projects at the RWF. The implementation of an OCIP is anticipated to result in cost savings, an expanded scope of insurance coverage, and increased claims' control, loss control, and safety management services for the City. Based on market rates and the best value insurance products available, staff recommends procuring \$100 million in combined commercial general and excess liability insurance, worker's compensation coverage, builder's risk insurance for replacement value of scheduled projects, excess professional liability insurance for selected projects, and \$10 million per occurrence pollution liability insurance.

BACKGROUND

On December 13, 2016,¹ City Council approved an agreement with Alliant Risk Insurance Services, Inc. (Alliant) to provide broker, administrative, and claims management services to assist the City with the marketing and implementation of an OCIP for the capital improvement projects at the RWF, with a total hard² construction value of \$535 million for the first five years of construction or as noted on the policy term. At that time, the City elected to pursue implementation of an OCIP in accordance with the recommendations of a feasibility study that concluded the City would likely have cost savings and increased scope of coverage through use of an OCIP to insure the CIP projects at the RWF. Through an OCIP, the City would arrange a master insurance program to protect and manage risk for contractors and subcontractors involved in the CIP projects at the RWF.

In January 2017, Alliant prepared a marketing package to solicit competitive quotes for insurance products needed to implement an OCIP. Included coverage lines were commercial general liability, excess liability, workers' compensation, builder's risk, professional liability, and pollution liability insurance. Coverage would include contractors and subcontractors that perform on site work for capital improvement projects that were not yet in construction as of the execution date of the OCIP policies but scheduled to start construction on or before December 2022 ("Program Participants"). Due to available products and policy terms, capital improvement projects at the RWF commencing after December 31, 2022 would be covered through a second OCIP or through the requirement of contractor provided insurance.

¹ Council Agenda December 13, 2016, Item 2.23,

http://sanjose.granicus.com/GeneratedAgendaViewer.php?event_id=a3998d1a-c7f0-4371-8ba5-ffab3d9c497b

² Hard construction costs consist of labor and materials and typically are 70% of total construction costs of a project.

ANALYSIS

In February 2017, Alliant presented the insurance quotations to City staff for review. The quotes were compared and evaluated for scope of coverage, cost, the insurer's financial strength and A.M. Best's Rating, the insurer's reputation on paying and administering claims, and the insurer's availability of resources to provide industry-related services such as risk related and loss control services.

Cost Analysis

Total insurance premiums for the recommended products over the next five years is \$8,153,181 verses estimated contractor costs for insurance covering the same construction values of approximately \$12,700,000. Additional program costs may arise from payment of claims deductibles, revisions in CIP project costs, or scheduling of additional projects. The City will annually submit updated construction values and payrolls to the selected insurance carrier who will review the data to determine if there are any policy rate adjustments because of additional scheduled projects or increased construction values.

In addition to premium costs, a cash collateral fund will be established at \$2,657,395 with \$531,479 to be paid in FY 2016-17 and every year thereafter for four years. Any remaining collateral will be released on or before the end of policy coverage, including product completed warranty phase, and close out of pending claims and as set forth in the Program Agreement Endorsement stipulating terms of the cash collateral fund management. Failure to make premium payments or collateral payments may result in cancellation of insurance coverage.

In addition to fixed premium costs, the City is subject to an aggregate maximum loss exposure of \$4,384,701 if the total number of claims result in the maximum number of potential deductible payouts. Each individual occurrence has a \$250,000 deductible for the commercial general liability and workers' compensation insurance. As losses arise, the City will be required to replenish the collateral fund as required by the Program Agreement Endorsement. Historically, with other City administered OCIPs, program losses reported were below 35% of the maximum loss exposure of the OCIP program. At maximum loss, the total cost of the OCIP Program is \$12.3 million compared to estimated contractor costs through traditional contractor provided insurance of \$12.7 million.³ Please see Appendix A for a summary of insurance coverage by product and Appendix B for A. B. Best Ratings.

Commercial General Liability and Worker's Compensation Insurance (combined product)

The OCIP, with the recommended carrier, Old Republic General Insurance Corporation, includes primary and noncontributory coverage through a multiline policy for commercial general liability and workers' compensation insurance. The commercial general liability insurance provides coverage for third party property damage or bodily injury for liabilities arising out of

³ In 2015, the City retained Bickmore, a risk consultant, to perform a feasibility study. The findings were that the City would likely see cost savings based on estimated hard construction costs of \$385 million dollars. Based on updated hard construction costs for the CIP projects to be enrolled in this phase of the OCIP, estimated contractor costs for contractor provided insurance would be \$12.7 million.

premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. Policy limits are \$2 million per occurrence with a \$4 million aggregate subject to a \$250,000 per occurrence deductible including any claims handling fees. Products completed coverage is for ten years from completion of the scheduled CIP project or until end of the statute of repose, whichever is shorter.

Workers' Compensation insurance includes employer's liability coverage and statutory workers' compensation claims coverage for Program Participants for on-site, work related injuries. Coverage excludes City employees and work performed offsite unless added by special endorsement.

The total policy premium is \$4,201,710. Substantial increases in construction costs or additional projects may result in increased policy premiums above the quoted rate. As a key policy term and condition, the City will execute a Program Agreement Endorsement stipulating the terms of collateral management to fund losses for total collateral of \$2,657,395 which authorizes full release of collateral upon release by the insurance carrier or termination of coverage during the products completed phase, whichever shall occur first. Policy premiums and cash collateral deposits shall be paid annually in five equal installments of \$1,371,821 excluding surplus lines taxes and fees.

Commercial Excess Liability Insurance

Excess liability insurance follows the form of the commercial general liability and worker's compensation coverage. Four carriers, Allied World Assurance Company, Endurance Risk Solutions Assurance Co., Ironshore Specialty Insurance Company, and American Fire and Casualty Company, are layered to provide \$100 million in excess limits. The total premium for all excess liability policies, including taxes and fees, is \$1,269,673. Premiums for excess liability are split into two payments during the first two years.

Builder's Risk Insurance

Builder's risk insurance provides total replacement cost for scheduled projects for all risks of physical loss and/ or damage including flood and excluding earthquake. Coverage includes a \$25 million flood sublimit per occurrence and annual aggregate. The policy has a \$50,000 deductible for all risk of loss excluding flood. The flood coverage deductible is 5% minimum loss of total insured value with minimum of \$250,000 deductible and maximum policy limits of \$25 million. The policy will be endorsed to add Program Participants as additional named insureds, as their interests may appear. Liberty Mutual Insurance Company is the recommended carrier.

The builder's risk policy is for a 36-month term with an option to extend coverage for ongoing projects subject to underwriter approval. Total estimated premiums for builder's risk insurance for construction value of RWF capital projects performed during the policy term are \$2,246,092. The RWF Cogeneration Facility CIP project, with estimated premium cost of \$315,000, will be the only project scheduled in FY 2016-17.

Excess Professional Liability Insurance

Excess professional liability coverage provides claims-made, project specific coverage to the City for liabilities and exposures resulting from breach of the performance of professional services providers, primarily including design, architecture and engineering work. Coverage is in excess of the individual practice policies of these professionals and applies only after exhaustion of proceeds on those policies. The City anticipates binding coverage for an excess professional liability policy in an amount not to exceed \$200,000.

Contractors Pollution Liability Insurance

Pollution liability insurance protects the City from third party claims for damages caused by pollution conditions arising from the insured's covered operations. The policy has a ten year completed operations endorsement. The second lowest quote was selected because the policy includes cost of defense outside policy limits. Non-owned disposal site coverage, designed to protect insureds against claims for bodily injury, property damage, or cleanup costs made against a disposal facility and environmental regulators or attorneys representing the disposal facility, is also provided for within the policy period. Total premium is \$235,706 with Ironshore Specialty Insurance Company.

Terrorism Risk Insurance Act of 2002

The Terrorism Risk Insurance Act of 2002 (TRIA) coverage provides an insurance mechanism (shared by private carrier and federal government) for losses arising from acts of terrorism as certified by the Secretary of Treasury. TRIA coverage is recommended for the aforementioned policies and has been calculated as part of the total premium due for each insurance policy discussed above.

EVALUATION AND FOLLOW-UP

A progress report on the OCIP and other RWF capital projects will be made to the Transportation and Environment Committee on a semiannual basis. In 2020, the City will review the Builder's Risk policy and seek possible renewal. In 2021, the City will fully evaluate and make recommendations on whether to issue a Phase II OCIP for ongoing and not yet commenced CIP projects at the RWF.

POLICY ALTERNATIVES

Alternative #1: Decline to procure and implement an OCIP and apply traditional contractor provided insurance requirements to contracts for the capital projects to be performed at the RWF.

Pros: Unlike with an OCIP, if the City elected this approach, the City would not require the use of broker, claims, and administrative services or internal resources as may be required to implement an OCIP. The City would not have a variable cost exposure associated with the insurance product.

Cons: The City would lose control on negotiating policy terms, have a narrower scope of coverage, assume costs related to multiparty litigation and limits issues, and would not have a centralized safety program, which promotes better control and fosters the City's zero accident initiative. Extended warranty coverage may result in a reduction in the period of coverage. Prime contractors also often include insurance product markups in their costings.

Reason for not recommending: Anticipated cost savings, improved coverage, and improved safety are the three main objectives of an insurance program. In this instance, traditional, contractor provided insurance requirements is unlikely to meet these objectives.

PUBLIC OUTREACH

This memorandum will be posted on the Treatment Plant Advisory Committee (TPAC) website for the June 8, 2017 meeting and the City Council website for the June 20, 2017 meeting.

COORDINATION

This memorandum has been coordinated with the Department of Public Works and the City Attorney's Office.

COMMISSION RECOMMENDATION

This item is scheduled to be heard at the June 8, 2017, TPAC meeting. A supplemental memorandum with the Committee's recommendation will be included in the amended June 20, 2017, City Council Meeting Agenda.

FISCAL/POLICY ALIGNMENT

This Project is consistent with the City Council approved budget strategy to focus on rehabilitating aging RWF infrastructure, improve efficiency and reduce operating costs. This product is also consistent with the budget strategy principle of focusing on protecting our vital core services.

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT:

Premium Summary

Commercial General Liability and Worker's Compensation Insurance	\$4,201,710
Commercial Excess Liability Insurance	1,269,673
Builder's Risk Insurance	2,246,092
Excess Professional Liability Insurance	200,000
Contractors Pollution Liability	<u>235,706</u>
Total Premium Costs	\$8,153,181
Total Collateral (cash collateral posted in the event of a loss and to cover City deductibles on claims)	\$2,657,395
Premium Costs and Collateral for 2016-2017	\$3,200,000

2. COST ELEMENTS OF AGREEMENT/CONTRACT:

Total Premium Costs	\$8,152,475
Total Collateral (replenished, as needed from payments to the aggregate loss deductible for the program)	\$2,657,395
Potential Deductible Costs (Maximum Aggregate Deductible)	\$4,384,701
Program Cost at Maximum Loss	\$12,537,176

3. SOURCE OF FUNDING: 512-San José-Santa Clara Treatment Plant Capital Fund. Appropriation actions for 2016-2017 are recommended to shift funding to OCIP from the Program Management and Preliminary Engineering appropriations. Funding for the OCIP was originally planned under Program Management appropriation, but staff later determined that the program should be funded under its own appropriation to provide it greater visibility. The Preliminary Engineering appropriation is a recurring appropriation for studies, pilots, and field verifications that inform or may result in capital project; these type of efforts have been minimal this fiscal year resulting in savings. Funding for future years is included within the 2017-2018 Proposed Capital Budget and 2018-2022 Capital Improvement Program as a separate OCIP line item.

4. FISCAL IMPACT: This contract will have no additional impact on the San-José-Santa Clara Treatment Plant Operating Fund (Fund 513) or the General Fund.

5. PROJECT COST ALLOCATION: In accordance with the recommendations set forth in Capital Project Cost Allocations Technical Memorandum (Carollo Engineers, March 2016), the cost for programmatic services including insurance coverage will be allocated among the users of the RWF between the four billable parameters relative to the rolling weighted average distribution of all RWF assets.

May 31, 2017

Subject: Insurance Products for Owner Controlled Insurance Program at the RWF

Page 8

BUDGET REFERENCE

The table below identifies the fund and appropriations to fund the contract recommended as part of this memo and remaining project costs, including project delivery, construction, and contingency costs.

Fund #	Appn #	Appn Name	Current Total Appn	Rec. Budget Action	2016-2017 Adopted Capital Budget (Page)	Last Budget Action (Date, Ord. No.)
512	New	Owner Controlled Insurance Program	N/A	\$3,200,000	N/A	N/A
512	7456	Preliminary Engineering	\$1,400,000	(\$700,000)	V-179	10/18/2016, 29803
512	7481	Program Management	\$9,108,000	(\$2,500,000)	V-180	10/18/2016, 29803

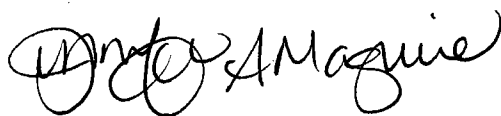
Future funding is subject to appropriation and will be included in the development of future year budgets during the annual budget process.

CEQA

Not a Project, File NO. PP10-066(1)(a), Agreements and Contracts.

/s/
JULIA H. COOPER
Director of Finance

/s/
KERRIE ROMANOW
Director of Environmental Services



JENNIFER A. MAGUIRE
Senior Deputy City Manager /
Budget Director

Attachments:

Appendix A - Summary of Insurance Policies

Appendix B - A.M. Best Ratings

For questions, please contact Stephanie C. Williams, Risk Manager at (408) 975-1438.

APPENDIX A

1. GENERAL LIABILITY

	OCIP PROGRAM (68 MONTH TERM)
Carrier	Old Republic General Insurance Corporation
Coverage and Deductible	\$2 million Per Occurrence \$4 million Aggregate \$250,000 Per Occurrence deductible \$375,000 Per Occurrence (clash deductible-combined deductible for same occurrence filed against both workers' compensation and general liability policies) \$4,384,701 (aggregate deductible for workers' compensation and general liability)
Fixed Premium	\$3,783,520
Estimated Taxes & Fees	\$400,000
Program Rates	\$7.07 per \$1,000 of Construction Values \$7.65 per \$1,000 of Construction Values
Optional TRIA premium (recommended for purchase)	\$18,190
Claim Handling Charges	1.07
Program Rates	Fixed Costs: 80% (up to 20% return of premium for cancelled projects or reduced construction values) Aggregate Deductible: 100%
Total 5 Year Premiums (Including Estimated Taxes/Fees)	\$4,201,710
Total 5 Year Collateral (Including Taxes/Fees)	\$2,657,395

2. WORKERS' COMPENSATION

	OCIP PROGRAM (68 MONTH TERM)
Carrier	Old Republic General Insurance Corporation
Coverage and Deductible	Statutory Workers' Compensation \$1 million Per Occurrence (Employer Liability) \$250,000 Per Occurrence \$375,000 Per Occurrence (clash deductible-for same occurrence filed against both workers' compensation and general liability policy) \$4,384,701 (aggregate deductible for workers' compensation and general liability)
Premium	Included with General Liability Policy
Optional TRIA premium (recommended for purchase)	Included with General Liability Policy
Total (Including Taxes/Fees)	Included with General Liability Policy

3. EXCESS LIABILITY

	OCIP PROGRAM (68 MONTH TERM)
Carriers	<ul style="list-style-type: none"> • Allied World Assurance Company (\$25M over Commercial General Liability and Employer Liability) • Endurance Risk Solutions Assurance Company (\$25,000,000 over \$25,000,000) • Ironshore Specialty Insurance Company (\$25,000,000 over \$50,000,000) • American Fire and Casualty Company (\$25,000,000 over \$75,000,000)
Policy Type and Scope	Follows Form in Excess of the General Liability and Employers Liability Occurrence Form-Defense Outside Policy Limits Project Specific Program
Premium	\$1,257,449
Optional TRIA premium (recommended for purchase)	\$12,224
Total (Including Taxes/Fees)	\$1,269,673, split into two payments

4. BUILDER'S RISK

	OCIP PROGRAM (36 MONTH TERM)
Carrier	Liberty Mutual
Coverage and Deductible	Total replacement value of completed work for scheduled projects and follows form to a Master Builder's Risk Policy for all risks \$25 million sublimit for losses related to flood Earthquake is excluded \$50,000 Per Occurrence for all risks excluding flood 5% minimum loss of total insured value with minimum of \$250,000 deductible for flood
Fixed Premium	Calculated on a project by project bases with estimated total premiums, surplus lines, taxes, and fees of \$2,246,092 based on schedule of rates per \$100 construction value
Program	Master Program with 3-year policy term that may be extended to cover on-going projects at the end of 3-year term subject to underwriting approval
Optional TRIA premium (recommended for purchase)	\$61,046 (based on estimated construction values at a \$.0040 per \$100 of insured value rate and included in fixed premium as noted above)

5. EXCESS PROFESSIONAL LIABILITY

	OCIP PROGRAM (68 MONTH TERM)
Carrier	Carrier to be selected
Coverage and Deductible	Claims-Made-Project Specific with extended reporting period for ten years and owners protective policy. Policy in excess of other insurance and requires \$1,000,000 contractual insurance requirement for all professional services agreements. \$10 million per claim/aggregate limit \$100,000 per claim Deductible
Total Estimated Premium	\$200,000 (including surplus lines, taxes and fees)
Optional TRIA premium (recommended for purchase)	Cap on Certified Acts of Terrorism Endorsement
Total (Including Taxes/Fees)	\$200,000 estimated

6. POLLUTION LIABILITY POLICY

	OCIP PROGRAM (68 MONTH TERM)
Carrier	Ironshore Specialty Insurance Company
Coverage and Deductible	Occurrence-Project Specific with completed operations extension for ten years. \$10 million per claim/aggregate limit \$100,000 self-insured retention Defense outside the Limit NODS Coverage within policy period
Total Premium	\$235,706 (including surplus lines, taxes and fees)
Optional TRIA	Not Applicable

APPENDIX B

BEST'S FINANCIAL STRENGTH RATING GUIDE – (FSR)

A Best's Financial Strength Rating (FSR) is an independent opinion of an insurer's financial strength and ability to meet its ongoing insurance policy and contract obligations. An FSR is not assigned to specific insurance policies or contracts and does not address any other risk, including, but not limited to, an insurer's claims-payment policies or procedures; the ability of the insurer to dispute or deny claims payment on grounds of misrepresentation or fraud; or any specific liability contractually borne by the policy or contract holder. An FSR is not a recommendation to purchase, hold or terminate any insurance policy, contract or any other financial obligation issued by an insurer, nor does it address the suitability of any particular policy or contract for a specific purpose or purchaser. In addition, an FSR may be displayed with a rating identifier, modifier or affiliation code that denotes a unique aspect of the opinion.

Best's Financial Strength Rating (FSR) Scale

Rating Categories	Rating Symbols	Rating Notches*	Category Definitions
Superior	A+	A++	Assigned to insurance companies that have, in our opinion, a superior ability to meet their ongoing insurance obligations.
Excellent	A	A-	Assigned to insurance companies that have, in our opinion, an excellent ability to meet their ongoing insurance obligations.
Good	B+	B++	Assigned to insurance companies that have, in our opinion, a good ability to meet their ongoing insurance obligations.
Fair	B	B-	Assigned to insurance companies that have, in our opinion, a fair ability to meet their ongoing insurance obligations. Financial strength is vulnerable to adverse changes in underwriting and economic conditions.
Marginal	C+	C++	Assigned to insurance companies that have, in our opinion, a marginal ability to meet their ongoing insurance obligations. Financial strength is vulnerable to adverse changes in underwriting and economic conditions.
Weak	C	C-	Assigned to insurance companies that have, in our opinion, a weak ability to meet their ongoing insurance obligations. Financial strength is very vulnerable to adverse changes in underwriting and economic conditions.
Poor	D	-	Assigned to insurance companies that have, in our opinion, a poor ability to meet their ongoing insurance obligations. Financial strength is extremely vulnerable to adverse changes in underwriting and economic conditions.

* Each Best's Financial Strength Rating Category from "A+" to "C" includes a Rating Notch to reflect a gradation of financial strength within the category. A Rating Notch is expressed with either a second plus "+" or a minus "-".

FSR Non-Rating Designations

Designation Symbols	Designation Definitions
E	Status assigned to insurance companies that are publicly placed under a significant form of regulatory supervision, control or restraint - including cease and desist orders, conservatorship or rehabilitation, but not liquidation - that prevents conduct of normal ongoing insurance operations; an impaired insurer.
F	Status assigned to insurance companies that are publicly placed in liquidation by a court of law or by a forced liquidation; an impaired insurer.
S	Status assigned to rated insurance companies to suspend the outstanding FSR when sudden and significant events impact operations and rating implications cannot be evaluated due to a lack of timely or adequate information; or in cases where continued maintenance of the previously published rating opinion is in violation of evolving regulatory requirements.
NR	Status assigned to insurance companies that are not rated; may include previously rated insurance companies or insurance companies that have never been rated by AMBRS.

Rating Disclosure – Use and Limitations

A Best's Credit Rating (BCR) is a forward-looking independent and objective opinion regarding an insurer's, issuer's or financial obligation's relative creditworthiness. The opinion represents a comprehensive analysis consisting of a quantitative and qualitative evaluation of balance sheet strength, operating performance and business profile or, where appropriate, the specific nature and details of a security. Because a BCR is a forward-looking opinion as of the date it is released, it cannot be considered as a fact or guarantee of future credit quality and therefore cannot be described as accurate or inaccurate. A BCR is a relative measure of risk that implies credit quality and is assigned using a scale with a defined population of categories and notches. Entities or obligations assigned the same BCR symbol developed using the same scale, should not be viewed as completely identical in terms of credit quality. Alternatively, they are alike in category (or notches within a category), but given there is a prescribed progression of categories (and notches) used in assigning the ratings of a much larger population of entities or obligations, the categories (notches) cannot mirror the precise subtleties of risk that are inherent within similarly rated entities or obligations. While a BCR reflects the opinion of A.M. Best Rating Services, Inc. (AMBRS) of relative creditworthiness, it is not an indicator or predictor of defined impairment or default probability with respect to any specific insurer, issuer or financial obligation. A BCR is not investment advice, nor should it be construed as a consulting or advisory service, as such; it is not intended to be utilized as a recommendation to purchase, hold or terminate any insurance policy, contract, security or any other financial obligation, nor does it address the suitability of any particular policy or contract for a specific purpose or purchaser. Users of a BCR should not rely on it in making any investment decision; however, if used, the BCR must be considered as only one factor. Users must make their own evaluation of each investment decision. A BCR opinion is provided on an "as is" basis without any expressed or implied warranty. In addition, a BCR may be changed, suspended or withdrawn at any time for any reason at the sole discretion of AMBRS.

BCRs are distributed via the AMBRS website at www.ambest.com. For additional information regarding the development of a BCR and other rating-related information and definitions, including outlooks, modifiers, identifiers and affiliation codes, please refer to the report titled "Understanding Best's Credit Ratings" available at no charge on the AMBRS website. BCRs are proprietary and may not be reproduced without permission.

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Version 090116



SAN JOSÉ / SANTA CLARA

WATER POLLUTION CONTROL PLANT

June 16, 2017

TREATMENT PLANT ADVISORY COMMITTEE

The Honorable Mayor and City Council
City of San José
200 East Santa Clara Street
San Jose, CA 95113

Dear Mayor Liccardo and City Council:

At its meeting of June 8, 2017, the Treatment Plant Advisory Committee (TPAC) reviewed these items concerning the Water Pollution Control Plant on the San José City Council agenda for June 20, 2017:

7.1 A. Report on Procurement of Insurance Products for an Owner Controlled Insurance Program for the San Jose – Santa Clara Regional Wastewater Facility

Staff Recommendation: Adopt a resolution authorizing the Director of Finance to:

- (a) Purchase insurance policies for the San José – Santa Clara Regional Wastewater Facility Capital Improvement Program with the total cost not to exceed \$10,810, 576,000 including insurance premiums of \$8,153,181 and a cash collateral fund of \$2,657,395, to be paid in five annual installments and subject to the annual appropriation of funds, as follows:
 - (1) Old Republic General Insurance Corporation: Commercial General Liability Insurance and Workers' Compensation Insurance with a Program Agreement Endorsement stipulating terms of the cash collateral fund management
 - (2) Allied World Assurance Company: Commercial Excess Liability Insurance
 - (3) Endurance Risk Solutions Assurance Company: Commercial Excess Liability Insurance
 - (4) Ironshore Specialty Insurance Company: Commercial Excess Liability Insurance
 - (5) American Fire and Casualty Company: Commercial Excess Liability Insurance
 - (6) Liberty Mutual Fire Insurance Company: Builder's Risk Insurance with special endorsement for Flood
 - (7) Ironshore Specialty Insurance Company: Contractors Pollution Liability Insurance
 - (8) Owners Protective Professional Liability Insurance with the insurance carrier to be determined pending the City's completion of the application process.
- (b) Adopt the following 2016 -2017 Appropriation Ordinance Amendments in the San Jose – Santa Clara Treatment Plant Capital Fund:
 - (1) Decrease the Preliminary Engineering appropriation to the Environmental Services Department by \$700,000;
 - (2) Decrease the Program Management appropriation to the Environmental Services Department by \$2,500,000; and



- (3) Establish the Owner Controlled Insurance Program appropriation to the Environmental Services Department in the amount of \$3,200,000.

Risk Manager Stephanie Williams and Assistant Vice President Mike Davidson with Alliant Insurance Services, Inc. presented.

Committee Member Debi Davis inquired if vendors making deliveries to and from a facility are covered under the OCIP. Mr. Davidson noted the City would have coverage if a third party were to sue for an incident due to negligence.

Committee Member Gatto asked if insurance coverage would continue if construction exceeded 68 months. Mr. Davidson replied that an entity could either start a new program after evaluating performance measures, extend their coverage, or use a traditional OCIP. Assistant Director Ashwini Kantak also clarified for Committee Gatto that the \$700,000 and \$2,500,000 appropriation listed in part (b) of the Staff Recommendation would apply to the \$8,000,000 premium.

Construction defect was discussed after Chair Liccardo raised the issue about equipment failure after a project is completed. "Products completed" coverage is often referenced as a work warranty period. Following completion of "operations" or construction, the Commercial General Liability (CGL) and excess policies have a ten year period of coverage (statute of repose permitting) for "products completed." Typical products completed warranties are three years, five years, and ten years.

Chair Liccardo also requested clarification between an excess liability and umbrella insurance policy. Ms. Williams responded that both excess liability and umbrella insurance policies are secondary policies with limits over and above the CGL policy. Excess liability programs follow form (same scope or, in rare cases reduced scope) from the primary commercial liability policy. Umbrella policies follow limits on the primary policy but expand scope from the primary policy and may even offer additional lines of coverage.

On a motion by Committee Member Phan and a second by Committee Member Debi Davis, TPAC approved to accept the staff recommendation.

Ayes – 9 (Debi Davis, Dev Davis, Diep, Gatto, Leonardis, Liccardo, Phan, Sykes, Watnabe)

Nayes – 0

Absent – 0

- B. Amendment to the Master Consultant Agreement with Stantec Consulting Services Inc. (formerly MWH Americas, Inc.) for Program Management Services for the San Jose – Santa Clara Regional Wastewater Facility Capital Improvement Program

Staff Recommendation: Approve an Amended and Restated Master Consultant Agreement with Stantec Consulting Services Inc. (formerly MWH Americas, Inc.) for program management services for the San José– Santa Clara Regional Wastewater Facility Capital Improvement Program, increasing the not-to-exceed agreement amount

from \$39,000,000 to a revised not-to-exceed agreement amount of \$78,000,000; and extending the term of the agreement from September 30, 2018 to June 30, 2023.

On a motion by Committee Member Gatto and a second by Committee Member Debi Davis, TPAC approved to defer this item to the August 10, 2017 TPAC meeting and August 22, 2017 Council meeting.

Ayes – 9 (Debi Davis, Dev Davis, Diep, Gatto, Leonardis, Liccardo, Phan, Sykes, Watanabe)

Nayes – 0

Absent – 0

2.10 C. Report on Bids and Award of Contract for 8241 – Paint Shop Spray Booth Replacement Project at the San Jose – Santa Clara Regional Wastewater Facility

Staff Recommendation: Report on bids and award of a construction contract for 8241 – Paint Shop Spray Booth Replacement Project to the low bidder Integra Construction Services, Inc. for the base bid in the amount of \$1,040,112 and approval of a construction contingency of 15 percent in the amount of \$156,017.

Chair Liccardo inquired if the high variance was due standard escalation.

Assistant Director Ashwini Kantak noted that the design variance was 39 percent higher than the Engineer's Estimate due to the market, type of work, labor, and parts.

On a motion by Committee Member Dev Davis and a second by Committee Member Phan, TPAC approved to accept the staff recommendation.

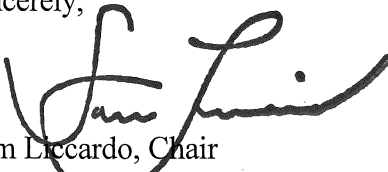
Ayes – 7 (Debi Davis, Dev Davis, Diep, Liccardo, Sykes, Phan, Watanabe)

Nayes – 1 (Leonardis)

Absent – 0

Abstain – 1 (Gatto)

Sincerely,



Sam Liccardo, Chair
TREATMENT PLANT ADVISORY COMMITTEE

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE DIRECTOR OF FINANCE TO PURCHASE INSURANCE POLICIES FOR THE SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY CAPITAL IMPROVEMENT PROGRAM, WITH TOTAL COST NOT TO EXCEED \$10,810,576 INCLUDING ESTIMATED INSURANCE PREMIUMS OF \$8,153,181 AND A CASH COLLATERAL FUND OF \$2,657,395, TO BE PAID IN FIVE ANNUAL INSTALLMENTS AND SUBJECT TO THE APPROPRIATION OF FUNDS

WHEREAS, on December 13, 2016, the City Council approved an agreement with Alliant Risk Insurance Services, Inc. ("Alliant") to provide broker, administrative, and claims management services to assist the City of San José ("City") with the marketing and implementation of a multiline owner controlled insurance program ("OCIP") to protect and manage risk for contractors and subcontractors involved in projects for the Capital Improvement Program ("CIP") at the San José-Santa Clara Regional Wastewater Facility ("RWF"); and

WHEREAS, in January 2017, Alliant prepared a marketing package to solicit competitive quotes for insurance products needed to implement the OCIP, including commercial general liability insurance, excess liability insurance, workers' compensation coverage, builder's risk insurance, professional liability insurance, pollution liability insurance, and Terrorism Risk Insurance Act of 2002 coverage; and

WHEREAS, the City has compared and reviewed the quotes presented by Alliant and desires to authorize the selection and purchase of the policies of insurance as described in the memorandum from the Director of Finance dated May 31, 2017;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

The Director of Finance is authorized to purchase insurance policies for the San José-Santa Clara Regional Wastewater Facility Capital Improvement Program, with total cost not to exceed \$10,810,576 including estimated insurance premiums of \$8,153,181 and a cash collateral fund of \$2,657,395, to be paid in five annual installments and subject to the annual appropriation of funds, as follows:

1. Old Republic General Insurance Corporation: Commercial General Liability Insurance and Workers' Compensation Insurance with a Program Agreement Endorsement stipulating terms of the cash collateral fund management.
2. Allied World Assurance Company: Commercial Excess Liability Insurance.
3. Endurance Risk Solutions Assurance Company: Commercial Excess Liability Insurance.
4. Ironshore Specialty Insurance Company: Commercial Excess Liability Insurance.
5. American Fire and Casualty Company: Commercial Excess Liability Insurance.
6. Liberty Mutual Fire Insurance Company: Builder's Risk Insurance with special endorsement for Flood.
7. Ironshore Specialty Insurance Company: Contractors Pollution Liability Insurance.
8. Owners Protective Professional Liability Insurance with the insurance carrier to be determined pending the City's completion of the application process.

ADOPTED this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk