SUMMARY STATEMENT

ITEM NO.: DRPA-13-087
SUBJECT: DRPA/PATCO Owner Controlled Insurance Program and the AIG Payment Agreement for Insurance and Risk Management Services

COMMITTEE: Finance

COMMITTEE MEETING DATE: July 10, 2013
BOARD ACTION DATE: July 17, 2013

PROPOSAL: Staff seeks Board authorization to extend the amended AIG Payment Agreement for Insurance and Risk Management Services. The original AIG Payment Agreement was issued for the OCIP term 3/7/2008-3/7/2012.

While the Authority was in the process of selecting a broker in 2012 for the OCIP, the Board authorized our former broker, The Graham Company, to extend the OCIP term from 3/7/2012-9/7/2012. An amended Payment Agreement was issued by AIG for the OCIP insurance term 3/7/2012-9/7/2012. The amended Payment Agreement was approved by General Counsel and executed on 6/18/2012 by the Chief Executive Officer.

The OCIP was subsequently extended a second time from 9/7/2012-3/7/2013. When the OCIP was extended for the second time, AIG did not request an extension of the Payment Agreement for the OCIP insurance term 9/7/2012-3/7/2013.

On January 16, 2013, the Board approved DRPA Resolution 13-009, which extended the OCIP again from 3/7/2013 to 6/30/2014. At the time of the third OCIP extension, AIG did not request another extension of the Payment Agreement.

On April 16, 2013, our new OCIP Broker, Turner Surety & Insurance Brokerage (TSIB), forwarded an amended AIG Payment Agreement for the OCIP insurance term 3/7/2013 to 6/30/2014. As with the former AIG Payment Agreements, the amended Payment Agreement will be effective 3/7/2008 and will expire 6/30/2014, the expiration date of the OCIP insurance term. TSIB is in the process of comparing the amended AIG Payment Agreement against the former AIG Payment Agreement and will provide a recommendation to staff shortly.
In the meantime, staff seeks authorization to process, on a monthly basis, as billed by AIG, the actual payment of claims and/or expenses incurred by AIG that fall within the deductible amounts of $250,000 or $350,000 as explained above.

PURPOSE: Since 2000, the DRPA has used an Owner Controlled Insurance Program (OCIP) as an alternative method by which to recognize and address the risks inherent in the various construction and maintenance projects at all of its facilities, including PATCO in a fiscally-sound manner. Through the OCIP, the DRPA provides insurance coverage for qualifying construction and maintenance capital projects. The DRPA secures broad coverage and higher liability limits. The broad coverage allows the inclusion of all parties involved as insureds.

BACKGROUND: On February 20, 2008, the Board approved the renewal of the DRPA’s OCIP. DRPA 08-022, the controlling summary statement and resolution for the 2008-2012 OCIP, did not reference the AIG Payment Agreement. During the OCIP insurance term of 3/7/2008-3/7/2012, The Graham Company forwarded the original AIG Payment Agreement for Insurance and Risk Management Services for DRPA signature. That agreement was executed for the OCIP 2008-2012 term. The Agreement provided that the DRPA was obligated to reimburse AIG on a monthly basis for the amount of loss and the Allocated Loss Adjusted Expenses (ALAE) within the deductible amount of $250,000 per claim or $350,000 (clash deductible for combined General Liability/Workers’ Compensation claim) that AIG had paid under the various OCIP policies.

As part of the OCIP, and pursuant to the Payment Agreement, AIG pays expenses related to open claims under the various OCIP policies, such as the Workers’ Compensation and General Liability policies. In addition to paying medical costs and loss of wages up to the deductible of $250,000 or $350,000 (as explained above) per claim, the DRPA is also responsible for all ALAE up to the relevant deductible.

The ALAE includes, but is not limited to, “all fees for service of process and court costs and court expenses; pre- and post-judgment interest; attorney fees; costs of undercover operatives and detective
services; cost of employee experts; costs of legal transcripts, copies of any public records, and costs of depositions and court-reported or recorded statements; costs and expenses of subrogation; and any similar fee, costs, or expense reasonably chargeable to the investigation, negotiation, settlement or defense of a loss or a claim or suit against (DRPA), or to the protection and perfection of either DRPA or AIG’s subrogation rights.” The ALAE also includes medical management fees which may include medical bills, audit fees, utilization management fees, network access fees and case management fees.

As with the former AIG Payment Agreements, under the amended Agreement (currently under review by TSIB) the DRPA remains obligated to reimburse AIG on a monthly basis for the amount of loss and the Allocated Loss Adjusted Expenses (ALAE) within the deductible amount of $250,000 per claim that AIG has paid under the various OCIP policies, and within the $350,000 clash deductible for a combined Workers’ Compensation/General Liability claim and/or loss. As part of the extended OCIP, AIG will continue to make payments for expenses related to open claims, such as Workers’ Compensation and General Liability losses. In addition to paying medical costs and loss of wages up to the appropriate deductibles (either $250,000 per claim for Workers’ Compensation and General Liability claims or $350,000 clash deductible for a combined Workers’ Compensation and General Liability claim), under the Payment Agreement, the DRPA will continue to be responsible for all ALAE up to the relevant deductibles.

Under the amended AIG Payment Agreement, the ALAE continues to include, but is not limited to, “all fees for service of process and court costs and court expenses; pre- and post-judgment interest; attorney fees; costs of undercover operatives and detective services; cost of employee experts; costs of legal transcripts, copies of any public records, and costs of depositions and court-reported or recorded statements; costs and expenses of subrogation; and any similar fee, costs, or expense reasonably chargeable to the investigation, negotiation, settlement or defense of a loss or a claim or suit against (DRPA), or to the protection and perfection of either DRPA or AIG’s subrogation rights.” The ALAE also includes medical management
fees which may include medical bills, audit fees, utilization management fees, network access fees and case management fees.

Since January 22, 2013, staff has provided DRPA General Counsel with a copy of the monthly statements from AIG along with all supporting documentation for her review and approval. The AIG monthly statement includes losses paid by AIG during the month. The first invoice (#22DRV1020468) reviewed by General Counsel was dated December 5, 2012, and reflected losses paid by AIG for the month of November 2012, which was payable in January 2013.

Before any AIG invoices are submitted to General Counsel and the CEO for review and signature, our OCIP administrator, TSIB, reviews all AIG invoices for accuracy. Upon completion of their review, TSIB provides staff with written confirmation recommending DRPA payment to AIG. A copy of TSIB’s recommendation is part of the package that is submitted to the General Counsel and the CEO for their review and approval.

Currently, the monthly invoices from AIG do not delineate the individual legal expenses paid by AIG for each claim. In accordance with DRPA 13-032, and, at General Counsel’s request, staff requested a letter from AIG confirming that all attorneys on AIG’s approved panel are being paid consistent with the rates outlined in DRPA 13-032. The affirmation letter from AIG is expected shortly. Upon receipt, staff will provide a copy to General Counsel for her review and comment.

Staff seeks authorization to process, on a monthly basis, as billed by AIG, the actual payment of claims and/or expenses incurred by AIG that fall within the deductible amounts of $250,000 or $350,000 as explained above.

SUMMARY: Amount: n-t-e the $250,000 deductible on a per claim basis
on all lines, except in the case of a combination General Liability and Workers’ Compensation claim where the clash deductible is $350,000 per claim.

Source of Funds: General Fund
Capital Project #: OCIP08
Operating Budget: N/A
Master Plan Status: N/A
Other Fund Sources: N/A
Duration of Contract: March 7, 2008-June 30, 2014
Other Parties Involved: AIG Insurance Companies
RESOLUTION

RESOLVED: That the Board authorizes staff to extend the amended AIG Payment Agreement for Insurance and Risk Management Services for the OCIP insurance term March 7, 2013 to June 30, 2014; and be it further

RESOLVED: That the Board authorizes Resolution DRPA 13-009 be amended to authorize staff to process, on a monthly basis, as billed by AIG, the actual payment of claims and/or expenses incurred by AIG that fall within the deductible amounts of $250,000 per claim for Workers’ Compensation, General Liability and other OCIP policies, or $350,000 (clash deductible) for a combined General Liability and Workers’ Compensation claim; and be it further

RESOLVED: That the Board recognizes that the DRPA is obligated to reimburse AIG on a monthly basis for the amount of loss and the Allocated Loss Adjusted Expenses (ALAE) within the deductible amount of $250,000 per claim that AIG has paid under the various OCIP policies, and within the deductible amount of $350,000 clash deductible that AIG has paid under a combined General Liability/Workers’ Compensation claim; and be it further

RESOLVED: That as part of the OCIP, AIG is authorized to make payments for expenses related to open claims under the various OCIP policies such as the Workers’ Compensation and General Liability policies, including medical costs and loss of wages up to the relevant deductibles; and be it further

RESOLVED: That the ALAE under the AIG Payment Agreement for Insurance and Risk Management Services, shall include, but not be limited to, “all fees for service of process and court costs and court expenses; pre- and post-judgment interest; attorney fees; costs of undercover operatives and detective services; cost of employee experts; costs of legal transcripts, copies of any public records, and costs of depositions and court-reported or recorded statements; costs and expenses of subrogation; and any similar fee, costs, or expense reasonably chargeable to the investigation, negotiation, settlement or defense of a loss or a claim or suit against (DRPA), or to the protection and perfection of either DRPA or AIG’s subrogation rights.” The ALAE also includes medical management fees which may include medical bills, audit fees, utilization management fees,
network access fees and case management fees; and be it further

RESOLVED: That before any monthly OCIP AIG invoices are submitted to General Counsel and the CEO for review, approval, and signature our OCIP administrator, TSIB, shall review all AIG monthly invoices for accuracy. Upon completion of the review, TSIB shall provide staff with written confirmation recommending DRPA payment to AIG. A copy of TSIB’s recommendation shall be part of the package that is submitted to the General Counsel and the CEO for their review and approval; and be it further

RESOLVED: That the Chairman, Vice Chairman and the Chief Executive Officer must approve and are hereby authorized to approve and execute all necessary agreements, contracts, or other documents on behalf of the DRPA. If such agreements, contracts, or other documents have been approved by the Chairman, Vice Chairman and Chief Executive Officer and if thereafter either the Chairman or Vice Chairman is absent or unavailable, the remaining Officer may execute the said document(s) on behalf of DRPA along with the Chief Executive Officer. If both the Chairman and Vice Chairman are absent or unavailable and if it is necessary to execute the said document(s) while they are absent or unavailable, then the Chief Executive Officer shall execute such documents on behalf of DRPA.

SUMMARY: Amount: n-t-e the $250,000 deductible on a per claim basis on all lines, except in the case of a combination General Liability and Workers’ Compensation claim where the clash deductible is $350,000 per claim.

Source of Funds: General Fund
Capital Project #: OCIP08
Operating Budget: N/A
Master Plan Status: N/A
Other Fund Sources: N/A
Duration of Contract: March 7, 2008-June 30, 2014
Other Parties Involved: AIG Insurance Companies