

REPORT TO THE CITY COUNCIL



DATE: May 20, 2014

TITLE: City's Insurance Requirements for the Contract Aquatic Services Provider, Fullerton Aquatics Sports Team (FAST)

Prepared by: Jeanine Plute, Assistant to the City Manager

RECOMMENDATION

Take whatever action the City Council deems appropriate.

DISCUSSION

On April 15, 2014, City Council approved a Service Provider Agreement ("Agreement") with FAST to provide Aquatic Programs at the John H. Furbee Aquatic Center and Wardman Pool for the 2014 summer season.

The City's insurance requirements for an Aquatic Center provider, as stated in the Request for Proposals ("RFP") to which FAST responded, are as follows:

Commercial general liability of not less than Five Million Dollars (\$5,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate; Worker's Compensation, and Auto Liability of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.

Subsequent to the Council's approval in April, as staff was attempting to secure the insurance requirements from the RFP, staff learned that FAST is unable to provide the City's \$10,000,000 aggregate general liability insurance requirement. Apparently, \$6,000,000 is the most that can be procured by FAST. As such, the Agreement has not yet been executed. No company other than FAST submitted a bid in response to the RFP.

Per the City Attorney, the City Council may not authorize the reduction of the City's insurance requirements set forth in the RFP without exposure to a possible lawsuit, (albeit minimal) as it is possible that there may be companies that did not submit proposals based on the \$10,000,000 requirement but may claim they would have submitted a proposal had the RFP required \$6,000,000, and that moreover, their bids would have been lower than that submitted by FAST. The City could re-issue the RFP with a reduced \$6,000,000 requirement; however, staff is concerned that there would not be sufficient time for such reissuance in time to have the Council award the contract for the Summer season.

PERMA (Public Entity Risk Management Authority), the City's Risk Management Agency, has advised staff not to reduce the insurance requirements below the \$10,000,000 amount. Attached to this report is PERMA's Risk Analysis Matrix which contains PERMA's recommendation of the \$10,000,000 minimum aggregate limit for general liability insurance in connection with use of aquatics facilities.

FISCAL IMPACT

None.

EXHIBIT(S)

1. PERMA's Risk Analysis Matrix