



AGENDA – Finance Committee

Thursday, March 16, 2023 5:45 P.M.

Committee Members

R. Gans
J. Pruyn
D. Russo
P. Suess – Chair
J. Zay

- I. Roll Call
- II. Approval of Reconciliations
- III. Approval of Minutes of February 16, 2023, Regular Finance Committee Meeting of the DuPage Water Commission

RECOMMENDED MOTION: To approve the Minutes of the February 16, 2023, Regular Finance Committee Meeting of the DuPage Water Commission.

- IV. Request for Board Action – A request amending and restating the Investment Policy of the DuPage Water Commission
- V. Request for Board Action – A request for Authorization for the General Manager to engage in a two (2) year agreement with Arthur J. Gallagher for insurance brokerage services at the DuPage Water Commission
- VI. Request for Board Action – A request to retain the services of Baker Tilly Virchow Krause for a one year term

RECOMMENDED MOTION: To recommend approval of Items 2 through 4 of the Finance Committee portion of the Commission Agenda.

- VII. Treasurer’s Report – February 2023
- VIII. Financial Statements – February 2023
- IX. Accounts Payable
- X. Other
- XI. Adjournment

Minutes of a Meeting
of the

FINANCE COMMITTEE

DuPage Water Commission
600 E. Butterfield Road, Elmhurst, Illinois

February 16, 2023

Chairman Suess called the meeting to order at 5:47 P.M.

Committee members in attendance: P. Suess, J. Pruyn, D. Russo, and J. Zay

Committee members absent: R. Gans

Also in attendance: P. May and C. Peterson

Commissioner Russo moved to approve the Minutes of the January 19, 2023, Finance Committee Meeting of the DuPage Water Commission. Motion seconded by Chairman Zay and unanimously approved by a Voice Vote.

Chairman Suess asked if there were any questions or comments regarding the Treasurer's Report, Financial Statements, or Accounts Payable as presented for January 2023. There were none.

Financial Administrator Peterson informed the Committee she had spoken the Commission's representative at A.J. Gallagher regarding the ability to enter into and pricing of a new two year contract. The Committee discussed with staff Gallaghers performance over the past three years and decided to move forward with a formal proposal from A.J. Gallagher to continue as the Commission's broker.

Financial Administrator Peterson requested approval to post the formal notice regarding the date of the public hearing for the Appropriation Budget. The Appropriation Budget would be based upon the Management Budget, with the same adjustments as there have been in the past, if there are no changes to be made due to the Committee of the Whole discussion that evening. The adjustments are to increase certain expenses by either 5%, 25% or 35% and increase the contingency based upon cash balances remaining. Approval to publish the notice prior to the next Board meeting was given.

With no other items coming before the Committee, Chairman Zay moved to adjourn the meeting at 5:54 P.M. Seconded by Commissioner Russo and unanimously approved by a Voice Vote.



Resolution #: N/A

Account: N/A

Approvals: *Author / Manager / Finance / Admin*

CAP - CAP PDM

REQUEST FOR BOARD ACTION

Date: 3/7/2023

Description: **A Request for Amending and Restating the Investment Policy of the DuPage Water Commission**

Agenda Section: Finance Committee

Originating Department: Finance

The Commission's Investment Policy was last updated on November 17, 2022. The proposed resolution amends the Commission's Investment Policy to add sustainability provisions required by state law. The new language has been added as Section 16.

The following language will be added:

16.0 SUSTAINABILITY

Pursuant to the Public Fund Investment Act (30 ILCS 235/1 et seq.), the Commission will consider material, relevant, and decision-useful sustainability factors, within the bounds of financial and fiduciary prudence, in evaluating investment decisions. These factors consist of, but are not limited to:

- (i) corporate governance and leadership factors;
- (ii) environmental factors;
- (iii) social capital factors;
- (iv) human capital factors; and
- (v) business model and innovation factors, as provided under the Illinois Sustainable Investing Act.

Recommended Motion:

A Request for Amending and Restating the Investment Policy of the DuPage Water Commission



Resolution #: N/A

Account: 01-60-642100

Approvals: *Author / Manager / Finance / Admin*

CAP - CAP PDM

REQUEST FOR BOARD ACTION

Date: 3/7/2023

Description: **Arthur J. Gallagher for insurance brokerage services contract extension**

Agenda Section: Finance Committee

Originating Department: Finance

This request would authorize the General Manager to engage in a two (2) year (with an additional 1-year option) agreement with Arthur J. Gallagher for Insurance Brokerage for a not to exceed amount of \$30,385 per year.

The Commission last solicited for sealed proposals for brokerage services in May 2020. Of the proposals were received, the proposal of Arthur J. Gallagher was found to be the most favorable bidder to the interests of the Commission. The Commission is very satisfied with the performance of Arthur J. Gallagher and would recommend extending the contract.

Recommended Motion:

Authorization for the General Manager to engage in a two (2) year agreement with Arthur J. Gallagher for insurance brokerage services.

CLIENT SERVICES AGREEMENT

This Client Services Agreement (this “**Agreement**”) is made and entered into as of the 9th day of July, 2023 (the “**Effective Date**”) by and between DuPage Water Commission, an IL Public Entity (“**Client**”), and Arthur J. Gallagher Risk Management Services, LLC, a Delaware limited liability company, and its licensed brokerage affiliates (“**Gallagher**”). Client and Gallagher shall each be referred to herein as a “**Party**” and collectively as the “**Parties**.”

WHEREAS, Gallagher is a global insurance brokerage and risk management services firm, and Client desires to retain Gallagher to provide certain services, as further described on Exhibit A attached hereto (collectively, the “**Services**”).

NOW, THEREFORE, in consideration of the mutual promises contained herein, Gallagher and Client hereby agree as follows:

I. TERM AND TERMINATION

This Agreement shall commence on the Effective Date and continue for a term of two (2) years and an optional third year. This Agreement shall automatically renew on the first anniversary of the Effective Date and annually thereafter for consecutive additional periods of one (1) year each (each a “Renewal Term”). This Agreement may be terminated by either Party at any time upon thirty (30) days’ prior written notice. In the event of any such termination, Gallagher will work with Client during such 30-day period to transition its account as directed.

II. SERVICES

Gallagher will provide the Services for Client as set forth on Exhibit A and incorporated herein, which Exhibit A may be amended from time to time as agreed upon in writing by the Parties. For Services that specifically include insurance placement by Gallagher as the broker, Client hereby authorizes Gallagher to represent and assist Client in all discussions and transactions with insurance companies relating to the lines of insurance set forth on Exhibit A when acting as Client’s insurance broker, provided that Gallagher shall not place any insurance on behalf of Client unless so authorized by Client in writing. In addition, Services that include the placement of insurance coverage require the following:

A. Client shall provide Gallagher with all information and documentation that may be relevant to the applicable risks that Client would like to insure, as requested by Gallagher and/or underwriters from which Gallagher intends to secure quotes. This information shall include any facts material to a fair assessment of the risk by underwriters, including risk exposures and loss experience, and shall be updated as information changes or is discovered after inception of coverage. Client’s failure to fully and completely disclose all such information could result in a carrier declining coverage for a specific loss or voiding Client’s insurance coverage altogether.

B. Gallagher will consult with Client regarding the terms of the insurance quotes received, and Client shall have sole discretion in the selection of the ultimate insurance markets and policies chosen, as well as any other decisions involving Client’s risk management, risk transfer and/or loss prevention needs. Gallagher will use reasonable efforts to secure insurance coverages on Client’s behalf and as directed by Client. Client must read all coverage proposals and policies carefully, as actual coverage is determined by the applicable policy language. Gallagher will provide guidance to Client regarding Client’s policy or coverage inquiries. In the event an insurer cancels or refuses to issue a particular policy, Gallagher will use reasonable efforts to obtain replacement coverage from another insurer.

C. Client is responsible for notifying applicable insurance companies directly in connection with any claims, demands, suits, notices of potential claims or any other matters in accordance with the terms and conditions of Client’s policies. Upon request, Gallagher will assist Client in determining applicable claim reporting requirements.

D. Client has no obligation to purchase an insurance product through Gallagher.

III. COMPENSATION, TAXES AND FEES

A. Client shall pay Gallagher fees for the Services set forth on Exhibit A. Where permitted, the Services may include fees in lieu of or in addition to commission for placement of insurance. If Gallagher receives

fees for insurance placement, the policy(ies) will be listed in Exhibit A, along with the fee for that insurance placement. Fees for post insurance placement Services may also be included in Exhibit A.

B. Based on market increases including, but not limited to, inflation, labor, overhead, and other good faith increases in the cost to Gallagher to provide the Services, the fees for the Services shall be adjusted on the first day for each Renewal Term. For each Renewal Term, provided the Services remain substantially similar to those provided in this Initial Term, the fees for the Services shall be increased zero (0%) percent over the prior year.

C. Gallagher's fees under this Agreement shall be fully earned on the Effective Date (and any anniversary thereof). Payment shall be made in accordance with the Illinois Local Government Prompt Payment Act (50 ILCS 505/1 et seq). Client shall inform Gallagher in the event that Client's business operations change substantially, including the applicable risks insured. Under such circumstances, Client and Gallagher will negotiate in good faith to adjust the amount of commission and/or fees to be paid to Gallagher hereunder.

D. Where applicable, insurance coverage placements and other Services provided by Gallagher may require the payment of federal excise taxes, surplus lines taxes, stamping or other fees to the Internal Revenue Service, various State(s) departments of revenue, state regulators, boards or associations. In such cases, Client is responsible for the payment of such taxes and/or fees, which Gallagher will separately identify on related invoices. Under no circumstances will these taxes or other related fees or charges be offset against fees or commissions due to Gallagher hereunder.

IV. ADDITIONAL COMPENSATION AND FEES

A. In addition to the fees and/or commissions set forth in Exhibit A or otherwise described herein, Gallagher may also receive interest or other investment income on funds temporarily held by it, such as premiums or return premiums. Other parties, such as excess and surplus lines brokers, wholesalers, reinsurance intermediaries, underwriting managers, captive managers and similar parties, some of which may be owned in whole or in part by Gallagher's corporate parent, may earn and retain usual and customary commissions and fees in the course of providing insurance products to clients.

B. Any compensation that Gallagher receives from insurance carriers may differ depending on the market and the insurance product placed on Client's behalf. Gallagher may receive additional compensation from insurance carriers in the form of contingent and supplemental commissions, bonus commissions, overrides or expense reimbursements. Any such fees or commission will not constitute compensation to Gallagher per Section III above.

C. Client is responsible for payment of premiums for all insurance placed by Gallagher on its behalf. If any amount is not paid in full when due, including premium payments to insurance companies or premium finance companies, Gallagher shall notify Client in writing. If payment is not paid within fifteen (15) days of written notice to Client, such nonpayment will constitute a material breach of this Agreement that will allow Gallagher to immediately terminate this Agreement upon written notice to Client or termination, at its sole option. Further, the applicable insurance carrier may terminate the associated coverage for nonpayment.

V. CONFIDENTIALITY & DATA PRIVACY

A. As used in this Agreement, Confidential Information means any nonpublic, proprietary or personal data and information furnished by either Party or its agents or representatives to the other Party or its agents and representatives, whenever furnished and regardless of the manner or media in which such information is furnished, which the receiving Party knows or reasonably should know to be confidential. Each Party shall treat Confidential Information as confidential and only use it in the performance of its obligations under this Agreement.

B. The Parties acknowledge that Confidential Information includes personal data provided to Gallagher by Client for the benefit of Client and/or its employees to facilitate the placement of insurance and/or the Services set forth in Exhibit A. Both Parties also agree that the Confidential Information may include information that alone, or in combination with other information, uniquely identifies an individual. Client agrees that Gallagher is permitted to disclose and transfer Client's Confidential Information to Gallagher's affiliates, agents or vendors that have a need to know the Confidential Information in connection with the Services provided under this Agreement (including insurance carriers, as necessary, for quoting and/or placing insurance coverages). In addition, Gallagher may also utilize anonymized/de-identified Client data in connection with data

analytics, service enhancement initiatives and similar business purposes. Either Party may also disclose such information to the extent required to comply with applicable laws or regulations or the order of any court or tribunal. Gallagher has established security controls to protect Client confidential information from unauthorized use or disclosure. For additional information, please review Gallagher's Privacy Policy located at <https://www.ajg.com/privacy-policy/>.

C. Both Gallagher and Client agree to comply with all state and federal laws, rules, and orders that relate to privacy and data protection which are, or which in the future may be, applicable to Confidential Information, the Services or the performance of obligations under this Agreement. Upon request, Gallagher will cooperate with Client pursuant to applicable law(s) to comply with requests from individuals regarding their personal information.

VI. DISPUTE RESOLUTION

A. In the event of a dispute between the Parties arising out of or relating to this Agreement or the relationship created by this Agreement ("**Dispute**"), the Parties agree to attempt to resolve that Dispute by mediation. If mediation fails to resolve the Dispute, a Party may proceed to litigation.

B. A Party wishing to assert a Dispute shall do so by providing a written notice ("**Notice**") of the claim to the American Arbitration Association ("**AAA**") in accordance with its Commercial Arbitration Rules and Mediation Procedures, unless specifically excluded under Section VI.A of this Agreement. All Dispute resolutions shall take place in Chicago, IL, unless otherwise agreed by the Parties. The Parties will equally divide all costs of the mediation proceedings and will each pay their own attorney fees. All matters will be before neutral, impartial and disinterested mediator that have at least 20 years' experience in commercial and insurance coverage disputes, which may be based in legal practice, insurance company or insurance brokerage practice, or a combination thereof.

C. Mediation will occur within sixty (60) days of filing the Notice with the AAA. Mediation results will be reduced to a Memorandum of Understanding signed by both Parties and the mediator.

VII. LIABILITY LIMITATIONS

Gallagher's liability to Client arising from any acts or omissions of Gallagher shall not exceed \$20 million in the aggregate. Without limiting the foregoing, each Party shall only be liable for actual damages incurred by the other Party, and shall not be liable for any indirect, special, exemplary, consequential, reliance, punitive damages or for any attorneys' fees other than as described in Section VIII.A below (whether incurred in a dispute or an action against the other, or as alleged damages that any Party incurred in any insurance coverage dispute, or otherwise). No claim or cause of action, regardless of form (tort, contract, statutory, or otherwise), arising out of, relating to or in any way connected with this Agreement or any Services provided hereunder may be brought by either Party any later than two (2) years after the accrual of such claim or cause of action.

VIII. MISCELLANEOUS

A. Indemnification. To the fullest extent permitted by law, Gallagher agrees to defend, indemnify and hold Client and its affiliates and their respective directors, officers, employees and agents harmless from any and all losses, liabilities, exposures, damages and all related costs and expenses, including reasonable legal fees, to the extent arising from or relating to any third party claims, demands, suits, allegations, or causes or threats of action based on Gallagher's: (i) breach of any representation, warranty or covenant made hereunder, or (ii) acts or omissions; provided, however, that Gallagher shall not be required to defend, indemnify or hold harmless Client for Client's own acts or omissions or those of its employees or agents.

To the fullest extent permitted by law, Client agrees to defend, indemnify and hold Client and its affiliates and their respective directors, officers, employees and agents harmless from any and all losses, liabilities, exposures, damages and all related costs and expenses, including reasonable legal fees, to the extent arising from or relating to any third party claims, demands, suits, allegations, or causes or threats of action based on the Client's: (i) breach of any representation, warranty or covenant made hereunder, or (ii) acts or omissions; provided, however, that Client shall not be required to defend, indemnify or hold harmless Gallagher for Gallagher's own acts or omissions or those of its employees or agents.

EXHIBIT A

The following outlines Services provided by Gallagher over the term of this Agreement:

Fee for Services

Year One: \$30,385

Year Two: \$30,385

Optional Year Three: \$30,385

- Use our best efforts to secure the following lines of coverage on DuPage Water Commission's behalf: Workers Compensation, Bonds, Pollution/Environmental Liability, Crime, Property, Excess Liability, Commercial Package (Auto, Crime, General Liability, Excess Liability) and Underground Storage Tank.
- Cyber Liability not part of fee and will be on a commission basis.
- Provide consultation to DuPage Water Commission on exposures, existing coverage, and the desirability and/or feasibility of potential program changes, retention and data analysis.
- Work with DuPage Water Commission to prepare comprehensive underwriting data and criteria for insurance carrier negotiations.
- Market policies and summarize the results of the executed marketing strategy as well as provide program recommendations.
- Formally present coverage submissions to agreed-upon insurance carrier(s) and negotiate terms on behalf of DuPage Water Commission.
- Request endorsements, ensuring accuracy and delivery in a timely manner.
- Day-to-day account administration which includes policy review and issuance, coverage summaries, invoicing, coordination and/or issuance of required documentation such as certificates of insurance and other program administration as required by DuPage Water Commission.
- Review accounting/billing data and audit information from insurance carriers to ensure accuracy.
- Assist DuPage Water Commission in claims management, including assistance with establishing claims reporting procedures, making claim notifications to insurers, and advocate on DuPage Water Commission's behalf in the event of a complex or contested claim. Claims advocacy services include claims reviews, reserve adequacy review and attending claims meetings.
- Provide annual stewardship reports and marketing updates.
- Evaluate risk financing approaches and analyze approaches to address emerging risks.
- Online loss control platform and on-site loss control menu access.
- Access to eRiskhub for cyber liability

Client Signature _____

Date _____

B. Advisory Services. The Services provided by Gallagher, its employees and affiliated companies do not constitute legal or tax advice. Client must consult with its own legal and financial advisors to become fully apprised of any legal or financial implications to its business.

C. Assignment. This Agreement shall apply to and bind the successors and assigns of the Parties hereto, including, in the event of a Party's insolvency, debtors-in-possession and any appointed trustee or administrator. This Agreement shall be not be assignable by either Party, except with the prior written consent of the other Party; provided, however, that either Party may assign this Agreement to an affiliate or in the event of a merger or sale, provided the assignee is willing and able to assume such Party's obligations hereunder.

D. Independent Contractor. Gallagher is engaged to perform Services as an independent contractor of Client and not as an employee or agent of Client, and will not be operating in a fiduciary capacity.

E. Governing Law & Venue. This Agreement and any Dispute relating to or arising out of this Agreement shall be governed by the laws of the State of Illinois, without regard to its conflict of law rules. Any litigation under or regarding this Agreement shall be brought in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, and the parties hereby consent to, and waive any objection to, jurisdiction and venue in that court. In the event either Party initiates litigation under or regarding this Agreement, the prevailing Party shall be entitled to recover from the other Party its reasonable attorney's fees and costs including, without limitation, expert witness fees and costs.

F. Force Majeure. Neither Party shall be liable to the other for any delay or failure to perform any of its obligations under this Agreement (other than payment obligations) as a result of flood, earthquake, storm, other act of God, fire, derailment, accident, labor dispute, explosion, war, act of terrorism, sabotage, insurrection, riot, embargo, court injunction or order, act of government or governmental agency or other similar cause beyond its reasonable control.

G. Counterparts. This Agreement may be executed in multiple counterparts (including by scanned image or electronic signature), each of which shall be considered one and the same agreement, and shall become effective when signed by each of the Parties hereto and delivered to the other Party.

H. Warranties. Except as expressly set forth in this Agreement, Gallagher makes no other warranties of any kind with respect to the Services, including, without limitation, warranties that may be implied from a course of performance, dealing or trade usage.

I. Severability. If a court of competent jurisdiction determines that any provision of this Agreement is void or unenforceable, that provision will be severed from this Agreement, and the remainder of this Agreement will otherwise remain in full force and effect.

J. Entire Agreement. This Agreement and the exhibits attached hereto constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all prior negotiations, agreements and understandings as to such matters.

K. Non-Waiver. The Parties agree that any delay or forbearance by either Party in exercising any right or remedy under this Agreement or otherwise afforded by applicable law shall not be a waiver of or preclude the exercise of any such right or remedy. No change, waiver or discharge hereof shall be valid unless in writing and executed by the Party against whom such change, waiver or discharge is sought to be enforced.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

**ARTHUR J. GALLAGHER RISK
MANAGEMENT SERVICES, LLC**

DUPAGE WATER COMMISSION

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____



Resolution #: N/A

Account: 01-60-629000

Approvals: *Author / Manager / Finance / Admin*

CAP - CAP PDM

REQUEST FOR BOARD ACTION

Date: 3/7/2023

Description: **To Approve the Renewal of the Financial Services Contract between the DuPage Water Commission and Baker Tilly Virchow Krause, LLP**

Agenda Section: Finance Committee

Originating Department: Finance

Due to the continued need for part-time assistance and the possibility of additional consulting services in the finance department as needed over the course of the year, the Commission is requesting to renew the Financial Services Contract with Baker Tilly Virchow Krause, LLP for another one year term upon the same terms and conditions.

The previously signed contract was a two-year contract that expires April 30, 2023. However, it provided the option to extend the contract with the same terms and conditions for one additional year, through April 30, 2024 - upon delivery of a letter to Baker Tilly from the General Manager electing to renew for that additional year.

The Commission has been very satisfied with the services from Baker Tilly. In addition, the Commission has been able to restrain costs and maintain consistent professional coverage by continuing to use Baker Tilly on a limited basis.

Baker Tilly is able to provide experienced support for the Finance Department as the Commission continues to work on improving processes, while maintaining the needed level of segregation of duties. The Commission will also continue to have immediate access to the resources needed should the Finance Department be without an employee for a short or prolonged period of time.

Recommended Motion:

To retain the services of Baker Tilly Virchow Krause for a one-year term