SUMMARY STATEMENT

ITEM NO. SUBJECT: Renewal of DRPA Pollution Legal Liability Policy

COMMITTEE: Unfinished Business

COMMITTEE MEETING DATE: December 1, 2010

BOARD ACTION DATE: March 2, 2011

PROPOSAL: That the Board authorize staff to renew the Pollution Legal Liability Insurance policy that is due to expire on March 26, 2011. Staff seeks to renew this Pollution Legal Liability coverage on March 26, 2011 for a one (1) year policy term. If approved, the renewal program will maintain similar terms and conditions as existed on the policy that will expire on March 26, 2011.

PURPOSE: The policy will provide continued coverage for potential environmental personal injury, legal indemnification, and remediation claims that may arise from the lifting of deed restrictions for residential use of the former RCA buildings 8 and 17. Building 8 has often been referred to as “Radio Lofts.” Building 17 is now known as Victor Lofts Apartments and was long referred to as the “Nipper Building.”

BACKGROUND: The deed executed on November 30, 1993 by Martin Marietta Corporation (predecessor to Lockheed Martin) prohibited the use of the Nipper and Radio Loft buildings for residential purposes. Lockheed Martin agreed to remove the restriction provided the restriction remained in full force and effect as to the basement and first floor, and provided that Lockheed Martin was protected from any future claims arising out of any development of either building for residential purposes. The DRPA and others agreed to indemnify and hold Lockheed Martin harmless from any such claims.

On May 23, 2001, the DRPA entered into a 10-year agreement with Lockheed Martin Corporation, the City of Camden Redevelopment Agency (CCRA), and Cooper’s Ferry Development Association (CFDA), to redevelop the Nipper and Radio Loft buildings into residential apartment complexes, with related commercial and retail uses. The redevelopment work on Building 17 (“Victor Loft Apartments”) is complete. However, Building 8 (“Radio Lofts”) has
not been renovated at this time.

Pursuant to the terms of the Lockheed agreement, DRPA assumed responsibility for securing the required insurance. The original agreement with Lockheed and others (Martin Marietta and General Electric Company) required that DRPA purchase an environmental insurance policy with an aggregate limit of not less than $20 million and an initial policy term of at least 10 years. At the time the agreement was executed there were ongoing environmental remediation activities being conducted by Dranoff Properties, Inc., and its assignee, Victor Associates, L.P. Upon the issuance of “No Further Action” letters from the NJ Department of Environment Protection relative to these activities, the DRPA undertook the sole financial responsibility to maintain the policy and conduct further required work in order to maintain NJDEP standards and requirements.

As of November 8, 2010, the incumbent carrier (Commerce & Industry, now known as Chartis Casualty Company) has paid $193,263 to the DRPA as partial indemnification for incurred clean-up costs related to remediation of Building 17.

The time period for the DRPA to maintain the required coverage under the Lockheed Martin Agreement will expire on March 26, 2011, and DRPA will have no further contractual obligation to maintain an environmental insurance policy. As of March 26, 2011, the DRPA will have fully complied with the original agreement.

Although the contractual obligations relating to the insurance coverage will expire on March 26, 2010, the DRPA does have a perpetual obligation to indemnify Lockheed and others (Martin Marietta and General Electric Company) against civil liability, and to perform environmental remediation. Therefore, the purpose for maintaining environmental insurance coverage at this time would be to cover the DRPA’s risk of being called upon to indemnify Lockheed and others (Martin Marietta and General Electric Company) in the event of a significant lawsuit relating to the use of the buildings for residential purposes or to carry out the DRPA environmental remediation obligations. Note that DRPA is currently involved in a coverage dispute with its carrier which we hope to resolve through mediation.
At our direction, our broker, The Graham Company, marketed the coverage for one (1), five (5), and ten (10) year policy terms. There are a limited number of insurance carriers that can offer the broad pollution legal liability coverage required by DRPA. The Graham Company’s marketing efforts focused on carriers with a proven track record for managing complicated environmental claims, a strong A.M Best financial rating, and the ability to provide the DRPA’s contractually-required coverages.

The Graham Company received the following qualified quotes:

<table>
<thead>
<tr>
<th>Carrier</th>
<th>One (1) year</th>
<th>Five (5) years</th>
<th>Ten (10) years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chartis</td>
<td>$85,964</td>
<td>$277,805</td>
<td>$429,819</td>
</tr>
<tr>
<td>Ace</td>
<td>$76,125</td>
<td>$179,655</td>
<td>$299,355</td>
</tr>
</tbody>
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The above qualified quotes include a $20 million aggregate limit, and optional terrorism coverage, which The Graham Company recommends.

Although the premium quotes from Ace are lower than those received from Chartis, many of the terms and conditions of the coverage offered by Chartis are more favorable. For instance:

- The Chartis policy provides coverage for microbial (mold) and Legionella exposure; the Ace policy would not;
- Chartis has agreed to provide a $200,000 deductible aggregate cap for the one-year and five-year policy terms. Ace would only agree to provide a $500,000 aggregate deductible cap for a one-year, five-year, or ten-year policy term.
- The continuity dates for new claims filed under the Chartis policy would be March 26, 2001. By contrast, the continuity date for new claims filed under the Ace policy would be upon the date of policy inception – March 26, 2011.
- The Chartis policy has more favorable terrorism coverage than the Ace policy.
- The Ace policy will not cover a property that may be divested during the policy term. Staff believes that Building 8 is still owned by the
City of Camden Redevelopment Agency.

Staff recommends that the Pollution Legal Liability Policy be renewed with Chartis Casualty Company, effective March 26, 2011, for a one (1) year policy term, at the annual premium of $85,964.

SUMMARY:

- **Amount:** $85,964
- **Source of Funds:** General Fund
- **Capital Project #:** N/A
- **Operating Budget:** DRPA Risk Mgt. C/E#8 – TBD
- **Master Plan Status:** N/A
- **Other Fund Sources:** N/A
- **Duration of Contract:** March 26, 2011-March 26, 2012
- **Other Parties Involved:** Chartis Casualty Company
RESOLUTION

RESOLVED: That staff be and hereby is authorized to negotiate a one-year renewal term for the Pollution Legal Liability Insurance Policy for the Victor Loft Apartment building (also known as RCA Building 17) and for RCA Building 8, with Chartis Casualty Company for an annual premium of $85,964; and be it further

RESOLVED: That the policy term shall be effective March 26, 2011 through March 26, 2012; 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, 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.

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PATCO Admin. C/E Insurance & Claims- TBD
Master Plan Status: N/A
Other Fund Sources: N/A
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Other Parties Involved: Chartis Casualty Company