SUMMARY STATEMENT

ITEM NO.: DRPA-12-026  SUBJECT: DRPA Pollution Legal Liability Policy - Extension

COMMITTEE: New Business

COMMITTEE MEETING DATE: N/A

BOARD ACTION DATE: February 15, 2012

PROPOSAL: The current Pollution Legal Liability Policy will expire on March 26, 2012. Staff seeks authorization to extend the existing policy six months for an additional premium of $42,982. If approved, the policy extension will maintain the current terms and conditions (including a 15% commission) that exist on the policy that will expire on March 26, 2012. If approved, the policy extension would expire on September 26, 2012.

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 (“Radio Lofts”) and 17 (“Nipper Building/Victor Lofts Apartments”).

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 the 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 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.

The time period for the DRPA to maintain the required coverage under the Lockheed Martin Agreement expired on March 26, 2011. Therefore, there is no obligation to renew the policy. However, the DRPA does have a perpetual obligation to indemnify Lockheed and others (Martin Marietta and General Electric Company) against liability, and to perform certain environmental remediation. The policy extension would cover DRPA’s risk of being called on to indemnify Lockheed and others in the event of a lawsuit related to the use of the building for residential purposes or to carry out future DRPA remediation obligations.

The policy covers new and pre-existing conditions (not known by the DRPA) that occur and are reported after March 26, 2001, the inception date and retroactive date of the original policy. The Pollution Legal Liability Policy includes a $20 million aggregate limit, with a $100,000 deductible, and optional terrorism coverage, which The Graham Company continues to recommend. The policy will continue to provide coverage for microbial (mold) and Legionella exposure.

This extension was discussed at the Finance Committee on January 11, 2012 and on February 1, 2012.
Staff recommends that the Pollution Legal Liability Policy be extended with Commerce and Industry Insurance Company (d/b/a Chartis) for a six-month term, effective March 26, 2012 to September 26, 2012, at a premium of $42,982.

SUMMARY: Amount: $42,982
Source of Funds: General Fund
Capital Project #: N/A
Operating Budget: DRPA Risk Mgt. C/E#8 – TBD
Operating Budget: PATCO Admin. C/E Insurance & Claims – TBD
Master Plan Status: N/A
Other Fund Sources: N/A
Duration of Contract: March 26, 2012-September 26, 2012
Other Parties Involved: Commerce and Industry Insurance Company
RESOLUTION

RESOLVED: That staff be and is hereby authorized to bind a six (6) month extension of the Pollution Legal Liability Insurance Policy for the Victor Loft Apartment building (also known as RCA Building 17 or “Nipper Building”) and the Radio Lofts building (also known as RCA Building 8), with Commerce and Industry Insurance Company (d/b/a Chartis) for a premium of $42,982; and be it further

RESOLVED: That the policy extension term shall be effective March 26, 2012 through September 26, 2012; and be it further

RESOLVED: That the policy extension shall maintain the current terms and conditions (including a 15% commission) that exist on the policy that will expire on 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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