Monterey County

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Board Report

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Approve and authorize the following actions in connection with future Pollution Legal Liability (PLL) insurance coverage for property within the former Fort Ord:
a. That the County succeed the Fort Ord Reuse Authority (FORA) as the first-named insured for the remainder of the Pollution Legal Liability (PLL) insurance policy term (January 1, 2015 through December 31, 2024) following dissolution of FORA; and
b. That the County Risk Manager negotiate with FORA staff regarding the terms upon which the County would succeed FORA as the first-named insured for the remainder of the term of the PLL policy following dissolution of FORA.

RECOMMENDATION:
Staff recommends that the Board of Supervisors approve and authorize the following actions in connection with future Pollution Legal Liability insurance coverage for property within the former Fort Ord:
a. That the County succeed the Fort Ord Reuse Authority (FORA) as the first-named insured for the remainder of the Pollution Legal Liability (PLL) insurance policy term (January 1, 2015 through December 31, 2024) following dissolution of FORA; and
b. That the County Risk Manager to negotiate with FORA staff regarding the terms upon which the County would succeed FORA as the first-named insured for the remainder of the term of the PLL policy following dissolution of FORA.

SUMMARY:
On November 4, 2014, staff presented actions in connection with future Pollution Legal Liability (PLL) insurance coverage for property within the former Fort Ord. The Monterey County Board of Supervisors and the Successor Agency to the Monterey County Redevelopment Agency independently took the following actions:

- Renewed Pollution Legal Liability (PLL) insurance coverage for the County of Monterey through participation in FORA's Pollution Legal Liability insurance policy for the former Fort Ord area for the ten year period from January 1, 2015 through December 31, 2024;
- Authorized the County Risk Manager to bind coverage for the County of Monterey as part of $20 million of joint shared coverage for the County of Monterey and Successor Agency to the Redevelopment Agency of the County of Monterey for the ten year period at a projected estimated total cost of $400,000;
- Authorized use of General Liability Internal Service Fund (ISF) Enterprise Liability Fund to fund the obligation, subject to contribution to the premium by the Successor Agency if allowed by the Successor Agency;
- Authorized the Risk Manager to finalize coverage terms and enter into a payment plan with FORA and to provide UCP East Garrison LLC an option to purchase a

portion of County's coverage as an additional insured; and

- Directed staff to negotiate with FORA staff and return to the Board with a recommendation within the next 30 days as to whether and under what terms County would consider succeeding FORA as the first-named insured for the remainder of the term of the PLL policy following dissolution of FORA.

Following these action staff met with FORA staff, who urged the County to consider committing to succeed FORA as the first named insured following FORA's dissolution. As more fully explained below, staff recommends that the County agree to take on the role of first-named insured provided the self-insured reserve (SIR) retained by FORA ($200,000+) is transferred to Monterey County, subject to the same grant restrictions. The current offer from Chubb to accept the insurance coverage for the additional 10-year period is open for a 30-day period, from November 4 to December 4, 2014, and the policy must be bound by December 31, 2014 since the prior policy will expire January 1, 2015. Thus a decision on whether the County will agree to succeed FORA must be made before December 4, 2014.

DISCUSSION:

FORA is scheduled to dissolve by June 30, 2020. Renewal of the Pollution Legal Liability (PLL) insurance policy term is for a term from January 1, 2015 through December 31, 2024. To date, no succession policies for these types of matters have been established, except that, per Government Code section 67700, FORA is to submit a transition plan to LAFCO by December 30, 2018.

The FORA Board identified Monterey County as a potential entity to replace FORA as the first insured after June 30, 2020. The role of the first-named insured is to be the primary contact with underwriters, claims examiners and generally remains responsible for overall administration of the policy. This would require the County to administer the policy including processing claims and submitting reports.

By agreeing to assume the first-named insured role at this point, FORA staff is able to incorporate this provision within the negotiated policy binder terms with Chubb meaning we are able to lock in a very favorable rate and bind the provision in the policy for the entire 10-year term. Without this provision, we would need to negotiate a contract amendment with the carrier (Chubb) at the later date upon which FOR A is dissolved. Opening up the insurance contract at that time, prior to its expiration, could result in unwanted added costs, subjectivities, conditions or additional exclusionary provisions. The County would bear its proportionate share of those increased costs as a participant in the policy, and this action ensures a lower cost to the County. In addition, the County has the benefit of being a control point for the administration of the policy, thus allowing the County to better control costs.

The Risk Manager for the County would be authorized to negotiate for the transfer of FORA's $200,000+ SIR as a condition of taking on the successor obligation.

OTHER AGENCY INVOLVEMENT:

FORA is the lead agency to negotiate the policy premium and work with local agencies to divide that premium. FORA will retain a portion of the coverage, and offer the five land use jurisdictions with land holdings (Del Rey Oaks, Marina, Monterey-City, Seaside, Monterey

County) the ability to request a share of the coverage and pay a commensurate share of the premium. County Counsel and the Risk Management Division concur in the recommendation.

FINANCING:
The $200,000 SIR funds received from FORA would be eligible to help fund the administrative workload associated with the responsibilities of the County as first-named insured (e.g. Reporting claims, overseeing claims administrator, collecting deductible, communicating with underwriters on behalf of all additional named insureds, requesting certificates of insurance, etc.). The insurance broker (Marsh) is also available for assisting with these responsibilities.

Coverage for $20 million would cost the County (including the Successor Agency) $400,000 and provide coverage for a 10 year period (through December 31, 2024). Once the amount of coverage is established by participating agencies, FORA intends to pay the premium, with reimbursement by the participating agencies through a payment plan. Finance charges will be applied. An interest rate for this option has not yet been determined by FORA, but FORA staff stated that in no case can the financing extend longer than three to four years due to the FORA sunset date. On November 4, 2014, the Board and Successor Agency authorized the County Risk Manager finalize coverage terms and enter into a payment plan with FORA and to provide UCP East Garrison LLC an option to purchase a portion of County's coverage as an additional insured.

General Liability Internal Service Fund (ISF) Enterprise Liability Fund could fund the obligation. A three or four year repayment schedule affords time to recoup the cost to the ISF through appropriate allocation of this expense. The cost covered by the ISF could be recovered through annual distribution of insurance charges to all County department and agency budgets. This cost recovery could be spread over a two- or three-year period to minimize impacts to departmental budgets.

If the policy is written to cover both County and Successor Agency as named insureds, Successor Agency funds may help pay for cost of insurance for Successor Agency held lands if such cost is approved by the state Department of Finance (DOF). The Board of Supervisors of the Successor Agency agreed to participate in the coverage and contribute $40,000, ten percent of the premium, if allowed by the state Department of Finance. If the DOF disallows the charge, the Successor Agency coverage cost would have to be absorbed by the County, unless the DOF permits some other mechanism for recovery of the cost. In addition, staff is inquiring if UCP East Garrison LLC, the East Garrison developers, desire to purchase a portion of the County's coverage and be named as additional insureds.

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This report was prepared with assistance of Les Girard, Assistant County Counsel

cc: Board of Supervisors, Nick Chiulos, County Counsel (W. Strimling. K Reimann); County Risk Management, County Parks, FORA (M. Houlemard, S. Endsley, J. Garcia), (A Spear, K Saunders), MPC (V Nakamura), UC (G Bice), City of Marina (L Long), City of Seaside (D

Ingersol), City of Del Rey Oaks (D Dawson), City of Monterey (E Caraker)