

Exhibit A – Background and Discussion

Risk management, as a function, is critical for any organization, and particularly for counties, considering the frequency and scale of general liability and workers' compensation claims, and employee safety issues. In general, Risk Management functions typically include General Liability, Medical Malpractice, and Workers' Compensation, disability management, insurance procurement and management, contract insurance and indemnity requirements, and Safety and Prevention Programs.

Compliance Review Recommended Actions:

The "Report on Compliance Review of County's Claims Procedures for General Liability and Workers' Compensation Claims," commissioned by the Auditor-Controller, reviewed Monterey County's General Liability program for specification of duties, reserve setting, claims investigations, use of a claims committee, and I.R.S. form 1099 filings. It also reviewed the Workers' Compensation program in the areas of claims reserve monitoring, return to work/light duty program, and unfilled staff positions. In response to the Report on Compliance, already implemented compliance and further recommended actions are summarized in the tables in **Exhibit B**.

Alternative Options for Re-organization of Risk Management:

In the December 13th Report on Compliance, separate from the Compliance Report, the Auditor-Controller's Office recommended that your Board consider reorganizing the County Risk Management structure to follow the Los Angeles County model of risk management. This recommendation, as well as other reorganizational options are considered here.

Key Risk Management functions include legal and contract matters, human resources related functions, and financial and insurance administration. Workers' Compensation and General Liability claims are part of the legal process, and potential precursors to lawsuits. County Counsel is statutorily responsible to defend claims and litigation. However, Workers' Compensation matters also relate to personnel issues under purview of the Human Resources Department. In addition, other programs under Risk Management, such as Return to Work and ergonomic evaluations, relate to both legal issues and human resources. Similarly, the Safety Officer program has both personnel and legal components, as well as a role for RMA-Public Works & Facilities. Financial management and actuarial skills are also key to successful implementation. In other words, there is significant overlap of Risk Management functions with responsibilities of several departments.

A review of other California counties reveals that a variety of organizational structures are utilized, however, often these functions are combined in a single functional unit within human resources departments, administrative offices, or county counsel's offices.

A 2007 Organizational Review of the Monterey County Administrative Office by Management Partners (excerpts enclosed as **Exhibit C**) recommended transferring all risk management functions from the Administrative Office to County Counsel for organizational efficiency and to create an enterprise risk structure fostering systemic risk identification and mitigation measures. **Exhibit D** is a matrix describing alternative risk management structures in selected California counties.

Monterey County's current Risk Management structure, as recommended by Management Partners, is also utilized in Tulare and Kern Counties, with Risk Management functions under County Counsel. In Los Angeles County, Risk Management is a branch of the Chief Executive's Office. The Office essentially manages all Risk Management functions, except for litigated (i.e. contested) claims, and TPAs are utilized for both General Liability and Workers' Compensation. Contested General Liability claims and litigation, are managed by the L.A. County Counsel's Office, which manages both the claims and the TPA for those cases.

Other organizational configurations include the City and County of San Francisco model where County Counsel/City Attorney manage general liability and workers' compensation claims and litigation, or the San Diego and Tuolumne structures, where Human Resources manages all workers' compensation and safety functions, but County Counsel manages litigation and general liability claims. Many other counties, have their Risk Management divisions as a unit of the Human Resources Department.

Like the Tulare and Kern models, general liability claims, as precursors to lawsuits, with appropriate internal controls in place, are effectively managed by their County Counsel's Offices, as that office has the statutory responsibility for County litigation. Our County Counsel's attorneys are experienced in managing claims, and our current County Counsel is the legal counsel to the largest public entity risk pool (i.e., insurance), the California State Association of Counties-Excess Insurance Authority, advising on handling liability and workers' compensation claims. The handling and defense of claims, and decisions and recommendations regarding how to investigate, whether to litigate, whether to settle early, the amount of settlements, the procurement of liability insurance, and evaluating indemnity arrangements are appropriately made by County attorneys in coordination with the CAO, TPAs, the Board of Supervisors, and the impacted departments.

With respect to contract insurance provisions, the County Risk Management's contract review process for insurance and indemnification provisions are frequently cited as slow, and lacking creativity and flexibility. Poorly drafted contract language can create significant exposure to liability and should be carefully, and thoughtfully drafted; conversely, delays in contract review and inflexibility in contract approval affects the business efficiency of County departments. Under the existing organizational structure, the CAO recommends that County Counsel change staff assignments and procedures to continue minimizing contract liability exposures and while focusing more on facilitating business needs of flexibility and timeliness. Finally, obtaining county-wide insurance coverage is accomplished through insurance policy contracts. Current authority of staff to bind for these contracts is unclear and explicit authority is recommended, recognizing that negotiations to obtain coverage can be complex as well as competitive, while accommodating flexibility and speed in binding coverage. Staff recommends that your Board give direction to staff to proceed drafting ordinance amendments explicitly authorizing administrative authority to secure and bind both general liability and worker's compensation insurance for the County, Water Resources Agency, and dependent districts.

With any organization, internal controls should be in place that are systematic measures (such as reviews, checks and balances, methods and procedures) to ensure business is conducted in an orderly and efficient manner, assets are safeguarded, and errors, fraud, and theft can be deterred and detected. In the case of Risk Management functions, state law and the County Code vest certain decision making authority in the County Counsel with respect to claims and litigation; and the Auditor-Controller's Office approves all requests for payment. Within established settlement limits, further checks and balances are recommended by designating that the CAO's Office and County Counsel jointly provide final approval for general liability settlement

decisions below the Board approval threshold, and that the CAO, County Counsel, and Human Resources jointly provide approval of workers' compensation settlements.

Finally, a request for qualifications or proposals from third party administrators has not been conducted in some time. It is recommended that the designated department head(s) where the Risk Management functions of general liability and workers' compensation claims are housed, work with the CAO/Contracts Purchasing Division and CSAC-EIA to issue RFQs/RFPs for these contracted services. The new contracts should clearly delineate roles, including that the ultimate authority to manage these programs lies with the County departments, not the TPA.

In summary, the CAO believes the existing structure of Risk Management under County Counsel's Office, as recommended by Management Partners, is an acceptable structure, but recommends the above process recommendations and following new provisions: a) HR continue to recruit and fill vacant Risk Management positions; b) staff adopt procedures for Workers' Compensation claims and litigation handling that follow a similar protocol as General Liability claims and litigation; c) all Workers' Compensation settlements within statutory limits require joint approval by the Human Resources Director, CAO and County Counsel, or their designee; d) General Liability claims and litigation settlements within statutory limits require joint approval County Counsel and the CAO; e) major settlements above statutory limits continue to be approved by the Board of Supervisors; e) 1099 reporting by TPAs be designated by contract per requirements of the Auditor-Controller's Office; f) RFP for TPAs be initiated; and g) code provisions related to binding insurance contracts be drafted and adopted.