



Legislation Text

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File #: 2023-0680, Version: 1

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**Report to Carson Reclamation Authority**

Monday, September 11, 2023

Consent

**SUBJECT:**

**AUTHORIZE EXECUTIVE DIRECTOR TO APPROVE AND BIND COVERAGE ON A COMMERCIAL GENERAL LIABILITY POLICY FROM UNITED SPECIALTY INSURANCE COMPANY (PRIMARY) AND ENDURANCE AMERICAN SPECIALTY INSURANCE COMPANY AND AMBRIDGE (LLOYD'S), EXCESS CARRIERS, PROCURED THROUGH MARSH RISK & INSURANCE SERVICES IN AN AGGREGATE LIMIT OF \$10,000,000 (\$1,000,000 PRIMARY/\$4,000,000 PLUS \$5,000,000 EXCESS) AT A PREMIUM AND SURPLUS LINES TAX AMOUNT NOT TO EXCEED \$109,887.00**

**I. SUMMARY**

This action authorizes the Executive Director to approve and bind a commercial general liability policy with United Specialty Insurance Company (primary carrier) on a \$1,000,000 per occurrence/\$2,000,000 general aggregate; Endurance American Specialty Insurance for \$4,000,000 in excess of the first \$1,000,000; and Ambridge (Lloyds) for \$5,000,000 in excess of the first \$5,000,000, for a total of \$10,000,000 in coverage. The premium including Surplus Lines Taxes and commissions is \$109,887 for this one-year policy.

**II. RECOMMENDATION**

TAKE the following action:

AUTHORIZE the Executive Director to bind coverage on behalf of the Carson Reclamation Authority on a Commercial General Liability Policy with United Specialty Insurance Company (primary carrier) on a \$1,000,000 per occurrence/\$2,000,000 general aggregate/\$2,000,000 products-completed operations basis; Endurance American Specialty Insurance for \$4,000,000 in excess of the first \$1,000,000; and Ambridge (Lloyds) for \$5,000,000 in excess of the first \$5,000,000, for a total of \$10,000,000 in coverage, procured through Marsh Risk & Insurance Services, with a total cost of \$109,887 including broker commission and surplus lines taxes.

### III. ALTERNATIVES

TAKE another action deemed acceptable by the Authority Board.

### IV. BACKGROUND

For the development of general liability insurance coverage in 2017-2018, the CRA worked with its brokers and with CAM-Carson, LLC to develop a General Liability Owners Controlled Insurance Program (OCIP). An OCIP covers multiple owners and contractors and places the claims management process in the hands of the property owner, as the policy sits in excess of the corporate GL coverage provided by the contractors on site (who would frequently have the primary liability for a GL incident) and is managed by a contractual OCIP administrator. The OCIP was bound in September 2018 for a period of five years and now expires on September 12, 2023.

Since the CRA is not in construction mode at this time, it was anticipated that the CRA would be covered as an additional insured by the GL coverage procured by the Cell 3, 4, and 5 Developer, Carson Goose Owner, LLC pursuant to the Insurance Administration Agreement (IAA) and would not have to acquire replacement coverage for the OCIP. The CRA is primarily only engaged in O&M activity and preconstruction activity at this time. The language of the IAA states:

“From the date specified in each subsection below until the date specified in the subsection below or if no such date is specified, until Substantial Completion, Developer shall maintain, or cause to be maintained, the following:

4.01. Pre-Construction General Liability Insurance Program. Commencing on September 14, 2024 and at all times until the Developer Construction GL is obtained, Developer shall cause any contractors retained by Developer to perform pre-construction work to maintain commercial general liability insurance and umbrella and/or excess liability insurance (the “Pre-Construction GL”), including coverage for personal injury, bodily injury, death, accident and property damage, which insurance shall: (i) (1) be on a “occurrence” form; (2) be the primary insurance for third-party bodily injury and property damage at, on or under the Remainder Cells; and (3) collectively provide minimum coverage limits of at least (A) \$10,000,000 per occurrence, (B) \$10,000,000 general aggregate, and (C) \$10,000,000 products completed operations aggregate over the term of the policy...*The CRA will be scheduled as an additional insured under the Pre-Construction GL.*”

and

“5.01. Developer Insurance Obligations. Developer “shall be required to maintain all Insurance Programs required herein with insurers that are unaffiliated with Developer and having financial ratings reasonably acceptable to CRA, in form and substance satisfactory to the CRA in its reasonable discretion. In the event that Developer fails to

obtain one or more of the Construction Policies or minimum coverage terms required herein with respect to any Construction Policy (the underlying condition that Developer fails to satisfy as required under this Agreement, an "Uninsured Construction Risk"), *then the parties shall work together diligently and in good faith to: (i) secure insurance coverage for such Uninsured Construction Risk that is acceptable to CRA, in its reasonable discretion (the "CRA Insurance Solution") and the costs associated with obtaining the CRA Insurance Solution (including, without limitation, premiums and applicable brokerage fees) shall be paid entirely by Developer.*

Under Section 4.01 and 5.01 of the IAA, the GL Policy must be at a \$10,000,000 limit and in the event the Developer does not acquire it, the parties shall work together to acquire the policy to be paid entirely by the Developer. This is that policy. Other details of the Policy include:

Deductible: \$10,000 per incident (subject to contractor requirements described below)

Term: 9/12/2023 - 9/12/2024; 25% minimum earned premium

Insureds: Carson Reclamation Authority and a right to add Carson Goose Owner, LLC effective as of the closing date.

Coverage Grants:

(a) Bodily Injury and Property Damage: The insurer will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which the insurance applies. The insurer has the right and duty to defend the insured against any "suit" seeking those damages.

(b) Premises/Operations: This coverage is used to insure against claims arising out of a Named Insured's ownership, maintenance or use of premises including any operations that are in progress.

(c) Products/Completed Operations. This coverage is used to insure against claims arising out of bodily injury and property damage that result from work performed at the designated project site.

Notable Coverage Items and Key Exclusions:

(a) Subsidence Exclusion - exclusion for losses arising out of any subsidence or earth movement, including any movements of land caused by or arising out of operations by or on behalf of the insured.

(b) Digging and Excavation Exclusion - exclusion for losses arising out of or related to digging, excavation, boring or any similar underground work of any nature unless the following specific conditions are met: (i) prior to digging, third-party locator has marked all underground lines and the insured retains a written response from locator; (ii) utility lines are disconnected or turned off during the digging; and (iii) insured maintains written records confirming the foregoing for 2

years following completion of activities.

(c) Contractor Warranty and Conditions - deductible increases to \$50,000 unless contractors (i) maintain at least \$1,000,000 per occurrence and \$2,000,000 aggregate general liability limits of liability and (ii) contractually release and indemnify the insured for contractors' acts and omissions.

(d) Total Pollution Exclusion (including per- and polyfluroalkyl substances and chlorine-chlorate).

(e) Other Key Policy Exclusions: (i) asbestos, (ii) arsenic, (iii) lead, (iv) sulfates, (v) EIFS, (vi) worker's compensation, (vii) automobile liability, (viii) employment practices, (ix) silica and silica related dust, (x) professional services, and (xi) media run-off.

## **V. FISCAL IMPACT**

The quoted premium is \$109,887 including broker commission and surplus lines taxes. Under Section 5.01 of the IAA, this is to be paid for by the Developer.

## **VI. EXHIBITS**

1. Marsh Risk & Insurance Services \$10 Million Draft COI (pg. 5)

Prepared by: John S. Raymond, Executive Director