Los Angeles County
Metropolitan Transportation
Authority
One Gateway Plaza
3rd Floor Board Room
Los Angeles, CA

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FINANCE, BUDGET, AND AUDIT COMMITTEE
JUNE 20, 2024

SUBJECT: EXCESS LIABILITY INSURANCE PROGRAM

ACTION: APPROVE RECOMMENDATION

RECOMMENDATION

AUTHORIZE the Chief Executive Officer to negotiate and purchase Public Entity excess liability policies with up to $300 million in limits at a not-to-exceed premium of $29.9 million for the 12-month period effective August 1, 2024, to August 1, 2025.

ISSUE

Metro's Public Entity excess liability insurance policies (which include transit rail and bus operations) expire on August 1, 2024. Insurance underwriters will not commit to final pricing until two to three weeks before the current program expires on August 1st. Consequently, staff is requesting a not-to-exceed amount for this renewal, pending final pricing and carrier selection. Without this insurance, Metro would be subject to unlimited liability for bodily injury and property damage claims resulting primarily from bus and rail operations.

BACKGROUND

Metro's insurance broker, USI Insurance Services ("USI"), is responsible for marketing the excess liability insurance program to qualified insurance carriers. Quotes are currently being received from carriers with A.M. Best ratings indicative of acceptable financial soundness and ability to pay claims. The premium indication below is based on current market expectations. Final pricing, however, is not available until approximately 14 days prior to binding coverage.

Metro established a program of excess liability insurance to protect against insured losses. Each year, Risk Management meets with USI to prepare for the upcoming marketing process.

Initial discussions begin in the third quarter of the fiscal year through an evaluation of market conditions to determine the availability of coverages and at what levels of premium. The annual stewardship meeting is conducted in January to identify the required data, including loss development, ridership projections, mileage, and revenue hour estimates. Risk Management obtains the data, including targeted completion dates of various projects, to provide an accurate account of the agency's present and future liability exposures.

The data is then forwarded to USI to present to the domestic insurance marketplace as well as international markets in London and Bermuda. Due to timing requirements, USI approaches underwriters in March and April to ensure that data is deemed current. Initial indications of interest and costs become apparent in late April or early May.

USI provides a not-to-exceed number that serves two functions. First, the number provides an amount Risk Management may approach the CEO and Board to obtain approval for binding of the new program, which mitigates a potential gap in insurance coverage. Second, the number allows USI ample time to continue to negotiate with underwriters to ensure that Metro obtains the most competitive pricing available.

DISCUSSION

Staff and USI highlighted three main objectives for the 2024-2025 excess liability insurance renewal. First, to mitigate insurers' concerns with increased operating exposures, the marketing presentation emphasized the lower risk of light rail and subway services, in addition to the safety enhancements and pilot programs added to bus operations over the past years. Second, staff desired to continue a diversified mix of international and domestic insurers to maintain competition and reduce dependence on any single insurance carrier. Third, staff desired to obtain total limits of $300 million while maintaining an $8 million self-insured retention for rail claims and up to $20 million for all other claims. However, staff was open to increasing the self-insured retention structure if needed to retain reasonable premium pricing.

USI presented Metro's submission to all potential insurers in the U.S., London, European, and Bermuda markets representing over 25 carriers to create interest in all layers of Metro's insurance program. Insurance executives, both nationally and internationally, articulated continuing increased underwriting discipline for transportation and public entity risks. Insurers reviewed detailed loss information on Metro's claims and performed detailed actuarial valuations on Metro's claims.

In addition, this year, staff attended meetings arranged by USI with the major underwriting participants on Metro's program at the RIMS convention in early May. These meetings were a follow-up to a web presentation held in March to further answer questions they had concerning operations, safety, risk management, and claims. Increased ridership and claims are the main pricing drivers, and these meetings not only answered underwriter concerns but also fostered the relationship between Metro and its underwriters.

Last year, Metro obtained $300 million in excess liability coverage with an $8 million retention for rail claims and $12.5 million retention for all other claims with selected additional retentions up to $7.5 million. The market has changed drastically over the past five years. Extensive loss development related to auto liability caused the market to "harden" significantly resulting in less carrier capacity and higher premiums. Large verdicts and litigation financing have made loss projections much less reliable. Although these trends continue this year, through Metro's marketing efforts and partnership with USI, it is expected that underwriters, at an increase of premium, will once again be willing to provide coverage limits of $300 million for its excess liability program. Staff deems these limits as sufficient coverage and Metro has historically carried limits of $300 million.

USI faces many challenges in marketing Metro's liability insurance renewal. Carrier results from public agencies in California have been significantly worse than in other states. A very limited pool of carriers is willing to consider writing public entity policies. Metro is no exception primarily due to its size and its plaintiff-friendly jurisdiction of Los Angeles County. The loss development carriers are experiencing on accounts, including Metro's, has resulted in many ceasing operations entirely in California, with some of them pulling out of the U.S. entirely. Replacing retreating carriers has proved challenging, and Metro's recent loss history has not been stellar. Consequently, another rate increase is anticipated in the excess liability program premiums. Additionally, Metro's primary carrier must replace its reinsurance carrier, which carries some pricing uncertainty.

Metro's August 1st insurance placement will reflect higher insurance premiums necessitated by tightened underwriting guidelines and negative developments in auto liability losses. USI recommends maintaining the bifurcated program where Metro will keep an $8 million self-insured retention (SIR) on rail-related risks and up to $20 million for bus and other non-rail-related risks. Carriers are not willing to insure Metro's bus operations risk for less retention. Negotiations with carriers are ongoing and this action seeks authority to bind Public Entity excess liability coverage with minimum limits of $300 million and a not-to-exceed SIR of $20 million. A higher SIR may provide Metro with additional flexibility to contain premium costs. USI will continue to seek options (including alternate retentions and quota share options) and more favorable premiums until the renewal date.

Attachment A provides proposed options, premiums, and loss history of Metro's Excess Liability Insurance Program. Attachment B provides an overview of the proposed 2024-2025 Public Entity Excess Liability Program, which mirrors the current 2023-2024 program structure. Risk Management recommends proceeding with renewal at a minimum coverage limit of $300 million, and a not-to-exceed premium of $29.9 million.

DETERMINATION OF SAFETY IMPACT

Approval of this recommendation will not impact the safety of Metro's patrons or employees.

FINANCIAL IMPACT

Funding for eleven months, or $27.4M, of this action is included in the FY25 Proposed Budget in cost center 0531, Risk Management - Non-Departmental Costs, under projects 300022 - Rail Operations - A Line, 300033 - Rail Operations - C Line, 300044 - Rail Operations - B Line, 300066 - Rail Operations - E Line, 300077 - K Line, 301012 - G Line, 306001 - Operations Transportation, and 320011 - Union Station in account 50602 (Ins Prem For Gen Liability). Additional funding required to cover premium costs beyond FY25 budgeted amounts will be addressed by fund reallocations during the year.

The remaining month of premiums, $2,491,667, will be requested in the FY26 Budget development.

<u>Impact to Budget</u>

The source of funding for this action will come from federal, state, and local funding sources that are eligible for bus and rail operations.

EQUITY PLATFORM

Metro's insurance portfolio provides liability coverage and coverage for Metro-owned property, stations, tunnels, bridges, rolling stock fleet, right of ways, facilities, and buildings that provide transportation service and benefits. Metro's insurance portfolio ensures liability coverage and that its facilities, rolling stock fleet, and infrastructure, which serve these groups, are covered by insurance policies in the event of a major loss or damage. Valuation of these assets conforms to the insurance industry's replacement cost methodology. The proposed action supports Metro's ability to safely serve the communities and customers who rely on Metro's transportation services and assets, a majority of whom are lower income, Black, Indigenous, and other People of Color (BIPOC), people with disabilities, and/or do not own a private vehicle.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

The recommendation supports strategic plan goal # 5, "Provide responsive, accountable and trustworthy governance within the LA Metro organization." The responsible administration of Metro's risk management programs includes the use of insurance to mitigate large financial risks resulting from unlimited liability for bodily injury and property damage claims resulting from, primarily, bus and rail operations.

ALTERNATIVES CONSIDERED

Due to the continued hard market, there are no additional limits in coverage for consideration. SIRs above the current structure levels are being proposed and considered, and negotiations are ongoing. Attachment B reflects the proposed program structure, which mirrors the current 2023-2024 policy term. The only variation will be to the SIR, which may end up being higher than the current program structure.

Separate from this action, Risk Management has begun exploring the formation of a Metro Captive Insurer as an alternative to traditional insurance placement. Captive insurers can provide stabilization of costs as they are not subject to underwriting costs or global risk events. This nascent effort has included seeking guidance from County Counsel on the legal parameters, Treasury, and OMB on financial considerations, and laying the foundation for the possible issuance of a request for proposal. Risk Management will continue to work with its colleague departments as this effort develops.

NEXT STEPS

Upon Board approval of this action, we will advise USI to proceed with the placement of the excess liability insurance program outlined herein effective August 1, 2024.

ATTACHMENTS

Attachment A - Proposed Options, Premiums, and Loss History

Attachment B - Proposed Public Entity Liability Carriers and Program Structure

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