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 17, 2020

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 cost not to exceed $14.5 million for the 12-month period effective August 1, 2020 to August 1, 2021.

ISSUE

Metro's Public Entity excess liability insurance policies (which includes transit rail and bus operations) expire August 1, 2020. Insurance underwriters will not commit to final pricing until roughly six weeks before our current program expires on August 1st. Consequently, we are 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 from, primarily, bus and rail operations.

DISCUSSION

Our insurance broker, USI Insurance Services ("USI"), is responsible for marketing the excess liability insurance programs to qualified insurance carriers. Quotes are in the process of being received for our Public Entity program by our broker from carriers with A.M. Best ratings indicative of acceptable financial soundness and ability to pay claims.

Staff and USI developed a 2020-2021 Public Entity excess liability insurance renewal strategy with the following objectives. First, our insurance underwriter marketing presentations emphasized the low risk of light rail and bus rapid transit services in addition to safety enhancements and pilot programs added over the past years in order to mitigate insurer's concerns with increased operating exposures. Second, we desired to maintain a continuing diversified mix of international and domestic insurers to maintain competition and reduce our dependence on any single insurance carrier. Third, we desired to maintain total limits of $300 million while maintaining an $8 million self-insured retention but were open to increasing our self-insured retention if needed to retain reasonable premium pricing.

USI is presenting Metro's submission to all potential insurers in the U.S., London, European and

Bermuda markets representing over 25 carriers in order to create competition in all layers of our insurance program. Our broker communicated with principals in the markets in March, April, May and June of this year. Insurance executives both nationally and internationally articulated continuing increased underwriting discipline particularly for transportation risks. Insurers asked for detailed loss information on Metro risks and performed detailed actuarial valuations on our book of business to establish their premiums. We are awaiting final insurance quotes from carriers for the Public Entity policies from our broker.

Since Metro has a newer rail system, implemented industry leading safety enhancements before other transit agencies, and a robust claims management process, we benefit from favorable acceptance of our risk in the marketplace which differentiates us from other transit risk profiles. Last year, we obtained $300 million in Public Entity coverage with $8 million retention for $6.2 million. The relatively calm market we enjoyed for over 16 years changed drastically last year. Extensive loss development specifically related to auto liability, caused the market to “harden” significantly last year resulting in less carrier capacity and higher premiums. The trend continues this year. “Nearly all commercial insurance lines can expect to see rate increases and reductions in capacity through 2020”, according to the 2019-2020 Commercial Property & Casualty Market Outlook Q4 Update from USI. To further complicate the situation, the COVID-19 pandemic will only exacerbate market conditions.

Metro proves no exception to the international trend. USI faces many challenges in marketing Metro’s liability insurance renewal. Carrier results from public agencies, particularly in California, have been significantly worse than other states and carriers have been leaving the niche. A very limited pool of carriers is willing to even consider writing public entity policies. Metro is no exception primarily due to the size of our system and the fact that we are in Los Angeles County (considered to be a plaintiff-friendly jurisdiction). The loss development the carriers are experiencing on their accounts, including Metro, resulted in many of the carriers ceasing operations entirely in California, with some of them pulling out of the U.S. entirely. At least 20 carriers ceased to write transit or public entity in California in the past 18 months which includes four carriers in Metro’s primary $30 million layers. According to Risk and Insurance Magazine, “The biggest villain in this sad tale is the trend known as nuclear verdicts, the granting of multimillion-dollar payments or settlements by the courts in liability cases involving transportation companies. Liability payments worth millions of dollars have mushroomed, and insurers have grown ever wary of putting capacity on the line for this kind of risk.” Metro lost nearly $100 million in capacity (including our lead incumbent carrier of many years) at the start of the marketing effort. Replacing retreating carriers in the first $25 million layer of our program proves daunting , especially considering Metro’s recent loss history. Consequently, we are anticipating another significant rate increase in our Public Entity general liability program premiums and a change in our program structure over last year given the present state of the insurance marketplace.

Metro’s August 1st insurance placement will reflect higher insurance premiums necessitated by tightened underwriting guidelines, the need to replace carriers who exited our class of business and negative developments in auto liability losses. Our renewal program also includes an increase in our self-insured retention to $10 million for bus and other non-rail related risks. Carriers are not willing to insure Metro’s bus operations risk for less. USI recommends a bifurcated program where Metro will retain an $8 million self-insured retention on rail related risks. We were presented with several approaches within our bus program where Metro will retain a quota share of a loss in addition to the self-insured retention within a layer to reduce our renewal premium. USI will continue to seek options (including alternate retentions and quota share options) and more favorable premiums through July.

To put this into perspective, the most recent USI state of the industry report provides the following insight: “Rate increases, more selective deployment of and reductions in capacity in the primary and umbrella/excess liability market continue to be the new norm. Tighter underwriting standards and markets exiting certain classes of business have accelerated in the past 3-4 months and we do not see these trends abating soon, and, anticipate they will remain throughout 2020 and into 2021. In particular, umbrella and excess liability lines, have experienced the most firming over the past few months and in some cases, we are seeing pricing up over 100% with total capacity decreasing at least 25% and underlying attachment points increasing, especially for automobile liability.” (USI 2020 -2021 Commercial Property & Casualty Market Outlook Q1 Update)

Attachment A provides an overview of the current Public Entity program, renewal options and estimated associated premiums, and the agency’s loss history. The Recommended Program, Option A, includes total limits of $300 million with a bifurcated retention and provides terrorism coverage at all levels. Attachment B shows the tentative Public Entity program carriers selected and program structure.

DETERMINATION OF SAFETY IMPACT

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

FINANCIAL IMPACT

Funding for five months of $5.6 million for this action is included in the FY21 budget request in cost center 0531, Risk Management - Non Departmental Costs, under projects 300022 - Rail Operations - Blue Line, 300033 - Rail Operations - Green Line, 300044 - Rail Operations - Red Line, 300055 - Gold Line, 300066 - Rail Operations - Expo Line, 301012 - Metro Orange Line, 306001 - Operations Transportation, 320011 - Union Station, and 405533 - Commuter Rail in account 50602 (Ins Prem For Gen Liability). Additional funds required to cover premium costs beyond FY21 budgeted amounts will be addressed by fund reallocations during the year.

The remaining month of premiums will be included in the FY22 budget request, cost center 0531, Risk Management - Non Departmental Costs, under projects under projects 300022 - Rail Operations - Blue Line, 300033 - Rail Operations - Green Line, 300044 - Rail Operations - Red Line, 300055 - Gold Line, 300066 - Rail Operations - Expo Line, 301012 - Metro Orange Line, 306001 - Operations Transportation, 320011 - Union Station, and 405533 - Commuter Rail in account 50602 (Ins Prem For Gen Liability). In FY20, an estimated $6 million will be expensed for excess liability insurance.

Impact to Budget

The current fiscal year funding for this action will come from the Enterprise, General and Internal Service funds paralleling funding for the actual benefiting projects charged. No other sources of funds were considered because these are the activities that benefit from the insurance coverage.

This activity will result in an increase to operating costs from the prior fiscal year.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

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

Various deductibles and limits of coverage options were considered as outlined in Attachment A for the Public Entity program of insurance. Option A maintains $300 million limits and bifurcates the program to achieve a self-insured retentions (SIR) for bus and non-rail operations at $10 million plus a 50% share of losses in the primary layer and a SIR for rail operations at $8 million without any additional share of losses. Option B maintains $300 million limits and bifurcates the program as indicated above without a share of losses in the primary bus layer. Option C bifurcates the program as previously indicated but increases the bus SIR to $15 million without a share of losses in the bus layer. Option D is the same as Option A but reduces Metro’s loss limits to $200 million. Option A is recommended as the most cost effective while retaining a reasonable amount of loss risk. Option B is not recommended because the expected cost of a Metro share of a loss is less than the increased cost of the increased premium. Option C is not recommended since increasing the SIR increases Metro’s exposure to loss retention in the event of unexpected increased loss experience at virtually the same cost as Option A. Option D is not recommended because the cost benefit of decreasing the total premium is not worth reducing Metro’s insurance coverage limits by one third.

NEXT STEPS

Upon Board approval of this action, we will advise USI to proceed with placement of the excess liability insurance program outlined herein effective August 1, 2020.

ATTACHMENTS

Attachment A - Options, Premiums and Loss History
Attachment B - Proposed Public Entity Carriers and Program Structure

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