



Agenda Item No. (7)

To: Finance-Auditing Committee/Committee of the Whole  
Meeting of June 24, 2021

From: Kelli Vitale, Director Risk Management and Safety  
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Subject: **APPROVE RENEWAL OF THE LIABILITY AND PROPERTY  
INSURANCE PROGRAMS**

### **Recommendation**

The Finance-Auditing Committee recommends that the Board of Directors approve the Liability Insurance Program, effective July 1, 2021, as follows:

1. Delegate to the General Manager the authority to purchase the Excess General and Automobile Liability Insurance Program, including Public Officials and Employment Practices Liability with Terrorism Risk Insurance Act (TRIA) coverage, with various insurance companies with which the insurance broker is still negotiating. Potential insurers, many of which currently provide coverage to the Golden Gate Bridge Highway and transportation District (District), include Allied Public Risk, Berkley PE (Gemini), Inigo, MAP, Hyland, AWAC, Hiscox, Canopus, Convex, Hamilton Re, Aspen, Sompco, Apollo, Liberty and others for a one-year term. The expiring program has a \$100 million limit. Given the current difficult market, the District may elect to reduce limits for premium savings. For the renewal, this program will be excess of a self-insured retention of \$5 million for Auto Liability and \$3 million for General Liability, including legal defense costs within the self-insured retention. The renewal limits will be between \$75 and \$100 million. The insurance broker will be working through the month of June to negotiate the best possible insurance program for the District. This extra time will enable the broker to obtain offers of insurance in a difficult market. The delegation authorizes the General Manager to purchase insurance consistent with the terms described above up to a not to exceed premium amount of \$3.5 million.
2. Renew the Excess Workers' Compensation and Employers' Liability Insurance Program with Safety National, for a one-year term, in excess of a self-insured retention of \$1 million for each accident, with a \$25 million limit, for an annual premium of \$419,895;
3. Renew the Public Officials' / Employment Practices Liability Insurance Program with Ironshore, for a one-year term, with a liability limit of \$2 million for each

occurrence/annual aggregate. The program has a self-insured retention of \$250,000 for each Directors and Officers claim, and \$250,000 for Employment Practices Liability claims – the only exception being a \$500,000 self-insured retention for claims concerning Class Actions or Layoffs. The annual premium for this policy is \$186,540;

4. Renew the Fiduciary Liability Insurance Program for the Other Public Employee Benefits (OPEB) Trust Board with Chubb Insurance Company for a one-year term, with a \$5 million limit for each occurrence, and a \$25,000 deductible, for an annual premium of \$15,168;
5. Renew the Crime Insurance program with F&D/Zurich Insurance Company, for the third-year of a three-year term with a \$25,000 deductible and \$1 million limit for an annual premium of \$4,724; and,
6. Renew the three -year Environmental Liability program with Chubb with a \$5 million limit and a \$1 million sub-limit for Bioterrorism that covers expenses for the clean-up of decontamination. This policy includes a \$250,000 self-insured retention. The premium is \$66,789.
7. Renew the Cyber Liability Program with At Bay for a one-year-term. The program has a \$7 million limit, except for \$2 million for Ransomware attacks, and \$1 million for Social Engineering Fraud. The coverage has a \$50,000 self -insured retention with a premium of \$58,822.

The Finance-Auditing Committee also recommends that the Board of Directors approve the Property Insurance Program, effective July 1, 2021, as follows:

1. Renew the property insurance program with AIG for buildings and facilities for a premium of \$574,252, and also the excess earthquake and flood insurance program for a premium of \$139,460.
2. Renew the Marin Transit Bus Property Damage Program with actual cash value basis and a deductible of \$50,000 with Markel for a premium of \$29,493; and,
3. Continue to allocate monies to the Restricted Contingency Reserve, for FY 21/22, in the amount of \$1.3 million, as self-insurance for costs associated with Bridge Physical Damage and Loss of Revenue.

These recommendations are made with the understanding that the requisite funds will be available in the approved FY 21/22 Operating Budget for the Bridge, Bus, Ferry and District divisions.

This matter will be presented to the Board of Directors for approval at the June 25, 2021, meeting for appropriate action.

### **Summary**

This report summarizes the staff recommendation for the annual renewal of the Liability Insurance Program and Property Insurance Program. The Liability Insurance Program includes the Excess

Liability program and specific policies limiting liability in connection with workers' compensation claims, actions of public officials and employees, cyber liability, and claims for pollution. The Property Insurance program covers District buildings and facilities, as well as the Marin Transit buses that the District must insure, and also includes the allocation of monies to the Restricted Contingency Reserve. All policies in this report expire on June 30, 2021.

This report contains discussions of the renewal recommendations and overall insurance market conditions, and includes specifics on premium costs, coverage limits and the work on the renewals for the Liability Insurance Program performed by USI Insurance Services (USI), the District's insurance broker.

This renewal cycle has been fraught with unprecedented difficulties in effectuating renewals within the District's program at similar prices, terms and conditions. In several cases, insurance coverage simply is not available. In others, it is not available without a 200% to 300% price increase rendering it unaffordable. Given these difficulties, staff recommends that the Board allow more time for the USI team to seek more favorable deals for the District – it is recommended that the Board delegate the authority to the General Manager to purchase coverage so long as it meets the terms, conditions and not to exceed cost limits outlined in this report.

## **I. Liability Insurance Program**

The Golden Gate Bridge, Highway and Transportation District's (District) Liability Insurance Program, which renews on July 1, 2021, is currently comprised of:

- Excess Liability Insurance
- Excess Workers' Compensation & Employers Liability Insurance
- OPEB Fiduciary Liability Insurance
- Public Officials and Employment Practices Liability Insurance
- Crime/ Fidelity Coverage (currently in the last year of a three-year policy period)
- Environmental Pollution Insurance (three-year policy renewing 7/1/21)
- Cyber Liability Insurance

### ***A. Excess Liability Insurance***

The excess liability insurance market for Public Entities has been challenging for the last four years, particularly for those entities associated with bus transit operations, schools, police and fire. The District's Excess Liability program premiums are based largely on the exposure arising from the operation of Golden Gate Transit and takes into account losses, the number of buses and ridership levels, and the use of armed peace officers. This year, the excess liability market is seeing dramatic increases in premiums - particularly for risks with heavy auto (bus) liability exposures. Many insurers that had traditionally insured these types of risks have withdrawn from the market due to losses that have doubled, tripled, or even quadrupled over the past year especially in highly litigious states like California. The District is well aware of the potential for large losses, most notably its \$4+ million claim from 2013 and a more recent 2019 claim arising from a serious bus/pedestrian accident.

Insurance companies are seeing bus (auto) claims that are exponentially higher than in previous years, as well as increasing numbers of use of force claims in the law enforcement context and active shooter claims. The recent unfortunate active shooter incident at VTA is a reminder of how vulnerable transit agencies are to unusual events that give rise to large claims. In addition, given the Bridge's iconic status, underwriters express concern over the District's terrorism exposure.

Over the last two years, many Excess Liability carriers have left the market and others have significantly reduced capacity. The District therefore must replace \$10 million in coverage capacity in the lower levels of its coverage "tower;" which is difficult because these lower levels are more commonly tapped by the insureds, which make insurers hesitant to provide the coverage at a reasonable rate. Coverage is only available at substantially increased premiums. Staff therefore recommends that the Board allow the District's insurance broker up until July 1 to continue negotiations with all potential insurers to obtain the best possible renewal terms, and delegate the authority to purchase that insurance to the General Manager at pre-approved levels and not to exceed costs.

The District has carried a coverage limit of at least \$100 million for quite some time, and while there is no science to determining the appropriate amount of insurance, this large limit is in place as catastrophic coverage. The following table summarizes the history of the District's Excess Liability Program limits, self-insured retentions, and premiums since FY 05/06:

F/Y	Limits (in millions)	Self-Insured Retention (in millions)	Premium (in thousands)
2005-2006	\$75	\$5	\$1,651
2006-2007	\$75	\$5	\$1,294
2007-2008	\$100	\$3	\$1,298
2008-2009	\$125	\$3	\$1,141
2009-2010	\$100	\$2 (incl. defense cost)	\$1,280
2010-2011	\$110	\$2 (incl. defense cost)	\$1,200
2011-2012	\$110	\$2 (incl. defense cost)	\$1,071
2012-2013	\$110	\$2 (incl. defense cost)	\$1,052
2013-2014	\$100	\$2 (incl. defense cost)	\$934
2014-2015	\$100	\$2 (incl. defense cost)	\$870
2015-2016	\$100	\$2 (incl. defense cost)	\$870
2016-2017	\$100	\$2 (incl. defense cost)	\$869
2017-2018	\$100	\$2 (incl. defense cost)	\$908
2018-2019	\$100	\$2 (incl. defense cost)	\$920
2019-2020	\$100	\$2 (incl. defense cost)	\$1,238
2020-2021	\$100	\$3M (incl. defense cost)	\$1,596

Thus, the premiums from 2005 were higher than what the District is currently paying for a lower \$75 million limit and a higher \$5 million self-insured retention. Interestingly, if we apply an inflation factor, **that insurance premium from 2005 would equate to \$2,256,428 in today's dollars.** Since 2005, explosive growth in verdicts in California, defined as those that exceed \$10 million and are typically disproportionate to what would be expected given economic damages in

a case, have challenged insurance companies, causing many to stop writing this insurance altogether. This chart therefore is a dramatic illustration of why insurance carriers are now increasing premiums so dramatically to cover their losses.

Regarding insurance limits, the District increased limits from \$75 million to \$100 million, then to \$110 million in 2010-2011, and back to \$100 million in 2013-2014. The District may choose to maintain the \$100 million limit, or it may reduce that coverage limit to save money in premiums given that the market is much more expensive this year. The limits for this renewal will be between \$75 and \$100 million.

USI is talking with every possible insurance carrier that has expressed willingness and/ or interest in writing insurance for the District, which includes over **50 insurance carriers**. The District's current lead excess liability carrier, Allied Public Risk (APR - an Allied World Company) has been the District's partner since 2014; this year APR reduced limits to \$5 million and increased the District's self-insured retention to \$5 million for Bus/ Auto liability and \$3 million for General Liability/ Public Officials Liability and Employment Practices Liability. Even with the increase in the self-insured retention, the premium will be a substantially higher than last year, given this very challenging market as well as the expectation of paying a large sum for the District's November 2019 claim arising from a bus/ pedestrian accident. Frankly, APR could have chosen not to renew this layer at all, which would have left the District with even more limited options unless it wanted to assume much higher levels of Self-Insurance, such as self-insured retention amounts of \$10 million or even \$15 million. The only other carriers writing above a \$5 million self-insured retention include Munich Re which declined, and Genesis, which offered a \$1.5 million premium for a \$2 million limit.

Berkeley Public Entity (PE) is a new carrier to the District and has offered coverage for the next \$5 million layer above the APR \$5 million layer, which is excess to the \$5 million self-insured retention. USI is also looking at alternative markets in London for this layer including Inigo and MAP, which are offering Bus Liability insurance limits at a lower premium than Berkeley PE has offered because these London markets will cap limits for multiple Bus Liability claims in any one year. This contrasts with the Bus liability insurance offered by Berkeley PE that has no aggregate limit for Bus liability claims. Given the unlikelihood of multiple significant Bus Liability claims in any one year, and the potential premium savings of moving to this aggregated insurance offered by Inigo and MAP, it may make sense for the District to engage Inigo and MAP.

Above this layer, AWAC, which has also been a long-term District partner (since 2009), has agreed to offer renewal terms but with a decrease in the current \$15 million limit to \$10 million. For higher levels, USI will seek higher coverage from AWAC, Hiscox, Canopus, Convex, Hamilton Re, Aspen, Sompco, Apollo, Hyland, Genesis and Liberty. There are almost 35 other markets declining to even offer insurance, including Munich Re, Travelers, Great American, Axis, National Interstate, RLI, Chubb, to name but a few.

The limits for the current District's Excess Liability Program are currently at \$100 million for General and Bus Fleet Liability, but the District may elect to lower its limit for premium savings. Currently, the District's self-insured retention for its Excess Liability Program is \$3 million for Bus Liability and \$2 million for General Liability/ Public Officials and Employment Practices

Liability and this will be increasing to \$5 million for Bus Liability and \$3 million for General Liability/Public Officials and Employment Practices Liability. Given the experience in this insurance market, the District estimates that, on the high side, the District can obtain insurance with these terms for FY 21/22 with a not-to-exceed premium of \$3.5 million. This is significantly higher than the FY 20/21 premium amount of \$1,589,739. USI therefore intends to work through the end of June to negotiate the best possible insurance program for the District. USI is looking at the following creative alternatives which may require the District to sacrifice broader coverage in exchange for some premium savings for the District to consider:

1. Lower overall limits from \$100 million to \$75 million.
2. Take higher levels of self-insurance within the coverage tower, such as between layers of coverage.
3. Strip out coverage for Law Enforcement Liability, Terrorism, Public Officials Liability, Employment Practices Liability or even General Liability higher in the tower and preserve the excess liability limits above a certain level for Bus Liability.
4. Look at options to cap limits for multiple Bus Liability claims in any one year. Bus liability insurance has no aggregate limit in the coverage tower, so the District has the benefit of this same limit for multiple Bus Liability claims in any one year.

***B. Excess Workers' Compensation Program***

The District's Excess Workers' Compensation program has a self-insured retention of \$1 million for a single claim and a \$25 million limit; the District has maintained that limit since 2004 but has never exceeded its self-insured retention during this time. The FY 21/22 premium is \$419,895, an increase from \$380,473 based on a 5.1% increase in payrolls and a 5% increase in the rate. The premium is based on the District's job classifications and payroll and this rate increase is less than what USI has seen for other transit districts.

USI marketed this program to every possible workers' compensation insurance market for transit districts. All carriers declined except for the current insurer, Safety National. Carriers that declined to offer insurance include Chubb, Arch, Alaska National, Sentry, Midwest Employers, US Specialty, Travelers and Zurich, and most declined due to concern over the exposure from the November 2019 claim. The District's current insurer, Safety National, views the District very positively given its attention to safety and efforts at timely claims closure.

***C. OPEB Fiduciary Liability***

The OPEB (Other Post-Employment Benefits) Fiduciary program was created in response to the District's creation of the OPEB Trust Board to oversee the assets and liabilities of the OPEB Trust. The premium for FY 2020/2021 was \$15,168 and USI achieved a flat renewal amount of \$15,168.

***D. Public Official and Employment Practices Liability***

The District has experienced losses on its Public Officials Liability/Employment Practices Liability insurance program over the last several years. This is typical for USI's public transit clients, and there now are only a limited number of insurers offering this coverage. The District's

insurance carrier projected a 40% to 70% premium increase this year, but USI was able to achieve a much better result.

This policy covers Public Officials and Employment Practices liabilities (EPL) claims with a limit of up to \$2 million for each occurrence/annual aggregate. The expiring policy was written by AIG and has a self-insured retention of \$250,000 for each Directors and Officers claim and \$500,000 for EPL claims.

At this renewal, AIG would no longer approve usage of Hanson Bridgett for choice of counsel in the defense of these claims. USI obtained an alternative coverage option from Ironshore, at a slightly less premium amount than AIG that has approved Hanson Bridgett as choice of counsel at pre-agreed rates. Ironshore also has a lower self-insured retention for EPL claims of \$250,000 except for \$500,000 for Class Actions or Layoffs. The District therefore has approved the change to Ironshore for a premium of \$186,540 for this coming year, which represents a 12% increase over the FY 20/21 premium of \$165,751.

***E. Crime/Fidelity Bond***

Crime Insurance provides coverage for up to \$1 million for Employee Dishonesty with a \$25,000 deductible. The District policy premium in FY 2019/2020 was \$4,724 for this coverage. This is a part of a three-year Crime policy that commenced on July 1, 2019. The premium for this policy remained flat for the coming year, as the District is in the third year of a three-year program.

***F. Environmental Pollution Liability***

The District has numerous environmental exposures, including underground and above ground fuel storage, storm water run-off, and air emissions from our vehicles. The District's environmental risks are well-controlled and are frequently audited by local, regional, State and Federal agencies.

The District's 3-year Pollution Liability policy with a \$250,000 deductible and \$5 million limit from Chubb Insurance Group renews this year. The 3-year premium for the new program is \$66,789, which is a slight increase over the last 3-year policy.

***G. Cyber Liability***

In FY 2020/2021, the District's Cyber liability policy was written by two insurers - At Bay and Corvus, with a \$50,000 SIR and \$5 million aggregate limit for liability for a premium of \$57,955.

The insurance market has changed dramatically in 2021, given the recent Cyberattacks including Solar Winds and Colonial Pipeline, and in the transportation space the NYC Subway, VTA and one of USI's local transit clients just this month. As a result, many insurance carriers have stopped writing Cyber insurance for public entities including Corvus, the District's current excess insurer. For those insureds able to get coverage, many are seeing premium increases of over 100%.

USI has obtained a renewal quote from the District's lead insurer At Bay to provide a \$3 million limit, except for a \$2 million sublimit for Ransomware attacks. At Bay will increase this limit to \$3 million once the District implements Multi-Factor Authentication (MFA) for email. This is one of the main ways cyber criminals access systems that lead to ransomware attacks. MFA for emails is in the District's IS strategic plan for the upcoming fiscal year.

The Social Engineering coverage limit is also reduced from \$2 million to \$1 million at this renewal. This insurance protects the District for loss when an employee is misled into sending money or diverting a payment based on fraudulent information.

USI is attempting to replace the loss in excess limits due to the non-renewal of Corvus and the reduction in ransomware limits from \$3 million to \$2 million, and has requested quotes from over 40 insurance carriers. All have declined based on the class of business and size of the risk, and none will consider excess limits until the District implements MFA for its emails.

USI has identified one insurer that may be able to offer a \$5 million Cyber limit with a \$500K limit for Social Engineering Fraud with a \$100K deductible for an estimated premium of \$85K. But USI is not altogether comfortable about the potential carrier because it is new to writing this Cyber liability coverage and untested in its claim-handling ability.

Staff therefore recommends contracting with At Bay program with the \$3 million limit, \$2 million sublimit for Ransomware attacks, and \$1 million sublimit for Social Engineering Fraud and a \$50K SIR, for a premium of \$58,822.

### **Fiscal Impact**

The Fiscal Impact of this Liability program renewal has been broken into two parts: Liability renewals approved by the Board and Liability renewals to be delegated to the General Manager. The premium for the recommended renewal package for the District's Liability Insurance Program is \$751,939, a 21%% increase over the expiring Liability Insurance Program policies covered in this report. The premium for the recommended renewal authority delegated to the General Manager the District's Liability Insurance Program is \$3,500,000, a 120% increase over the similar expiring Liability Insurance Program policies covered in this report. The FY 21/22 Operating Budget includes \$4,037,200 funds to cover the costs associated with the renewal of the District's Liability Insurance Program. If additional budgeted funds are needed and not available from other District programs, a budget adjustment will be brought to the Board late in FY 21/22.

## **II. Property Insurance Renewal**

The District's Property Insurance Program is comprised of:

- District Facilities & Buildings Insurance Program
- Bus Damage/Property Insurance Program for Marin Transit buses operated by the District
- Bridge Self-Insurance Loss Reserve



**A. *District's Property Insurance Program***

The Property insurance market remains a difficult one given losses from wildfire, riots and major freeze events. The good news is there has been some improvement in the market compared to last year, given increased availability of insurance. The District's expiring Property insurance premium for FY 20/21 was \$465,658. The District also purchased Excess Earthquake and Flood insurance for an annual premium of \$124,210 for FY 20/21.

Many organizations are still seeing rate increases over 25% depending on their loss experience and exposure profile. The District does have a very large pending loss of \$1.4 million that the current insurer, AIG, is prepared to pay. For its exposure profile, the District does have unique assets including piers, wharves and docks in addition to buildings and other assets at bus facilities, the toll plaza, etc.

The District's Property insurance program also includes Earthquake insurance at a \$10 million limit. This policy has a \$10 million limit for Flood insurance except for a \$5 million Flood limit at High Hazard locations including the San Rafael Bus Facility, San Rafael Transit Center and Larkspur Ferry Terminal. The District then purchases a separate \$10 million policy that provides Excess Earthquake insurance, plus Flood insurance at all but the High Hazard locations.

AIG is the District's current Property Insurer and has been for many years. SI solicited 15 different property markets, and none could compete with AIG's breadth of coverage or premium amount. For the Excess Earthquake and Flood insurance program, while Vikco and Sompco provided the Excess Earthquake and Flood coverage last year, a standalone program with Vikco is more competitively priced this year.

The District obtained a better than market renewal with only a 10% increase in its rate. In addition, the District had a 12% increase in property values given adjustments in values at the SF Bus Terminal and the addition of assets at the San Rafael Transit Center. Therefore, the Property premiums for FY 21/21 are \$574,252, and for the Excess Earthquake and Flood are \$139,460.

**B. *Bus Physical Damage Insurance for Marin Transit Buses***

The contract that was negotiated between Golden Gate Transit and Marin Transit requires the District to purchase bus property damage coverage on an actual cash value basis with a \$50,000 deductible for 16 District buses whose titles were transferred to Marin Transit effective July 1, 2015. The District typically does not purchase bus property damage coverage for its own buses. The FY 21/22 annual premium for this coverage provided by Markel is \$29,493; this is significantly more than last year's premium of \$14,159, given the higher values from the addition of newer buses.

**C. *Bridge Self-Insurance Loss Reserve***

The District will continue to fund the Bridge Self-Insurance Loss Reserve at \$1.3 million.

**Fiscal Impact**

The premium for the recommended renewal package for the District's Property Insurance Program is \$743,205, a 23% increase over the expiring Property Insurance Program policies covered in this report. The FY 21/22 Operating Budget includes funds to cover the costs associated with the renewal of the District's Property Insurance Program.

The District will continue funding the Restricted Bridge Self-Insurance Reserve Fund, with an investment of \$1.3 million. These funds are included in the FY 21/22 Budget. The allocation of \$1.3 million to the restricted contingency reserve will not have a net fiscal impact to the District in FY 21/22. The \$1.3 million will be transferred to the Restricted Bridge Self-Insurance Reserve Fund.