



Agenda Item No. (6)

To: Finance-Auditing Committee/Committee of the Whole
Meeting of June 23, 2022

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, 2022, as follows:

1. Delegate to the General Manager the authority to purchase the Excess General and Automobile Liability Insurance including Public Officials and Employment Practices Liability with Terrorism Risk Insurance Act (TRIA) coverage, for a not to exceed amount of \$4,535,721 for a one-year term. The Golden Gate Bridge, Highway and Transportation District's (District) insurance broker is still negotiating, with various potential insurers (some of which currently provide coverage to the District) Allied Public Risk, Berkley PE (Gemini), Inigo, MAP, AWAC, Vantage, Hiscox, Canopus, Convex, Hamilton Re, Aspen, Sompo, Apollo, Liberty, Munich Re, Hyland, Westfield, Westchester and others. The expiring program has a \$85 million limit and 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 District will look at a lower limit of \$75 million for premium savings. 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 more favorable offers in a difficult market. The delegation authorizes the General Manager to purchase insurance consistent with the terms described above for the not-to-exceed premium amount of \$4,535,721;
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 \$417,986;

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 \$500,000 for each Directors and Officers claim, and \$500,000 for Employment Practices Liability claims – the only exception being a \$1,000,000 self-insured retention for claims concerning Class Actions or Layoffs. The annual premium for this policy is \$222,960;
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 \$15,105;
5. Renew the Crime Insurance Program with F&D/Zurich Insurance Company, for the first-year of a three-year term with a \$25,000 deductible and \$1 million limit for an annual premium of \$4,231; and,
6. Renew the Cyber Liability Program with Resilience for a one-year-term. The program has a \$2 million limit and \$250,000 for Social Engineering Fraud. The coverage has a \$250,000 self -insured retention with a premium of \$96,616.

The Finance-Auditing Committee also recommends that the Board of Directors approve the Property Insurance Program, effective July 1, 2022, as follows:

1. Renew the property insurance program with AIG for buildings and facilities with a \$250,000 deductible for a premium of \$652,862, and the excess earthquake and flood insurance program for a premium of \$153,492;
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 \$29,494; and,
3. Continue to allocate monies to the Restricted Contingency Reserve, for FY 22/23, 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 22/23 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 24, 2022, meeting for appropriate action.

Summary

This report summarizes the staff recommendation for the annual renewal of the Liability Insurance and Property Insurance Programs. 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, crime, fiduciary liability and cyber liability. 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, 2022.

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.

As in the past, this renewal cycle has been fraught with unprecedented difficulties in negotiating renewals for the District's program at similar prices, terms and conditions. In several cases, insurance coverage simply is not available. Given these difficulties, staff recommends that the Board allow more time for the USI team to seek more favorable terms for the District on the Excess Liability program— 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, 2022, 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 (three-year policy renewing July 1, 2022)
- Cyber Liability Insurance

A. Excess Liability Insurance

The Excess Liability insurance program provides liability insurance for bodily injury or property damage to third parties from bus and bridge operations. This insurance also provides coverage for employment practices liability, public officials' liability and law enforcement liability claims.

The current limits for the current District's Excess Liability Program are \$85 million. The Self-Insured Retentions (SIRs) are \$5 million for Bus Liability and \$3 million for General Liability/ Law Enforcement Liability / Public Officials and Employment Practices Liability. The current premiums for FY 21/22 are \$3,680,077.

Last year's premium increased substantially for various reasons, and the current Excess Liability insurance market for Public Entities remains extremely challenging, particularly for those entities in California with bus transit operations and a law enforcement component. 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 \$18.5 million claim from 2019 arising from a serious

bus/ pedestrian accident. These two large claims in the past 10 years have had a significant impact on how insurance companies view the District.

The reasons some insurance companies have discontinued providing coverage for bus operations as follows:

- Recent large settlements
- California locale
- Overall poor experience with auto/bus risks
- Nuclear verdicts/social inflation

The lead or “primary” insurance layer is particularly difficult to place for the District given the certainty of large losses in that layer. There really are only a few insurers that may consider writing insurance at the lower layers, and most have provided ridiculously high premium numbers. For example, one insurer quoted a premium of \$1.65 million for the same limits as the District’s incumbent insurer, while another quoted a \$1.5 million premium for half of the limit. The District’s current lead Excess Liability carrier, Allied Public Risk (APR - an Allied World Company), has been an excellent District partner since 2014 and will provide the same \$5 million limit and Self-Insured Retention levels this year. APR is increasing its premium by 49% for the renewal. While significant, they could have elected to double the SIR to \$10M, reduce limits or even not offer renewed coverage. This insurance company paid the entire \$18.5 million pedestrian/ bus accident claim from 2019 and remains the most viable lead option available to the District.

The District’s insurance broker is accessing every possible insurance carrier that has expressed willingness and/or interest in writing insurance for the District, to complete the rest of the insurance tower of \$75 million or up to \$85 million in policy limits. While these insurance companies could quote at an increased amount, the broker has been successful in getting the excess carriers to agree to a much lower increase. Given this, the broker expects the premium for the \$75 million tower will not exceed the total premium amount of \$4,535,721.

B. Excess Workers’ Compensation Program

While the District self-insures its workers’ compensation claims, it purchases Excess Workers’ Compensation insurance to cover potentially catastrophic claims. The District self-insures the first \$1M of a single claim and purchases a \$25 million limit above that retention.

The insurance market for Excess Workers’ Compensation insurance is limited, and insurers are quoting increases of between 5% to 10%. This is a result of increasing claims expenses for public entities from rising medical costs and increased litigation.

The District’s insurer, Safety National views the District very positively given its attention to safety and efforts at timely claims closure. The expiring 21/22 premium was \$419,895, based on the District’s job classifications and payroll of \$75,520,712. For the upcoming 7/1/22-23 insurance renewal, the District’s renewal premium is lower at \$417,986 based on a lower payroll of \$74,071,600. This is a great result, with a slight rate increase offset by a small reduction in estimated payroll.

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 District currently purchases a \$5M limit for this insurance, and the policy has a \$25,000 self-insured retention (SIR). The premium for FY 2021/2022 was \$15,168 and the premiums are slightly less this year at \$15,105.

D. Public Official and Employment Practices Liability

This insurance policy pays claims for the District arising from employment practices for coverage of discrimination, harassment and wrongful termination claims. In addition, the public official's liability insurance covers potential claims made against the Board Members for alleged wrongful acts. The District has experienced losses on this insurance program over the last several years, which is typical for USI's public transit clients. As a result, there are a limited number of insurers offering this coverage, and the premiums continue to increase for this coverage each year, typically on the order of 20% to 40%.

This policy covers Public Officials and Employment Practices liabilities (EPL) with a limit of up to \$2 million for each occurrence/annual aggregate. The self-insured retention (SIR) increased this year to \$500,000 for each Directors and Officers claim, \$500,000 for EPL claims, and \$1 million for Class Actions or Layoffs. The District's insurance carrier is Ironshore, and the renewal premium this year is \$222,960, which is at the lower end of the expected premium increase.

The District's Excess Liability program (Section A, above), also includes this coverage as well, subject to a much higher \$3M Self-Insured Retention. The District decided to procure separate Public Officials/EPL policy described in this section D, to cover claims at this lower Self-Insured Retention amount. The District is also aware that there is a \$1 million gap in coverage between the \$2 million policy limit on this policy, and the coverage provided in the Excess Liability program described in Section A that has a \$3 million SIR with insurance coverage above \$3 million. In other words, the District would self-insure claims excess of \$2 million, up until \$3 million. The District has reviewed quotes for a higher \$3 million policy last year, and the additional premium costs were deemed prohibitive at the time.

E. Crime/Fidelity Bond

The District has a Crime Insurance policy that provides coverage for up to \$1 million for Employee Dishonesty with a \$25,000 deductible, which covers theft of money, securities and other property by employees. The District policy premium in FY 2021/2022 was \$4,724 for this coverage and was written by Zurich Insurance. For the renewal, the premium is slightly less at \$4,231, which is an annual premium and is part of a three-year Crime policy that commences on 7/1/22.

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 purchased a pollution liability policy from Chubb Insurance Company for a three-year term with a \$250,000 deductible and \$5 million limit for a three-year premium of \$66,789 effective July 1, 2021. There is no premium due on July 1, 2022, and the next renewal will not occur until 2024.

G. Cyber Liability

The Cyber Liability Insurance market remains very difficult, with insurance companies re-underwriting their insurance offerings, reducing capacity, increasing retentions and increasing Information Security (IS) requirements. Based on the claims these insurance carriers are paying, they are seeing that public entities are highly targeted industries, based on the potential for bad actors causing huge disruptions from ransomware attacks (i.e., Colonial Pipeline) and the perceived IS deficiencies in public entities as a class of business.

Many insurance carriers have stopped writing Cyber insurance for public entities. For the District, Corvus non-renewed its excess coverage layer in 2021, and for 2022, At-Bay non-renewed this year since it will no longer offer insurance for public entities as a class of business.

For July 1, 2022, the District's insurance broker sought alternative insurance carriers to replace At-Bay. We received quotations from a few carriers, with limits ranging from \$2 million to \$5 million, and all options had a higher self-insured retention of \$250,000. The District is binding coverage with a \$2 million limit, which also includes some coverage for Social Engineering Fraud insurance at a \$250,000 limit. Resilience offered a \$2 million policy limit for a premium of \$96,616 effective on July 1, 2022. This company also offers significant Information Security (IS) services, which are beneficial to the District.

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 \$756,898, a 10% increase over the same coverages in the expiring Liability Insurance Program policies covered in this report. The premium for the recommended renewal authority delegated to the General Manager, for the District's Liability Insurance Program is \$4,535,721 for the Excess Liability insurance, a 23% increase over the similar expiring Liability Insurance Program policies covered in this report.

The FY 22/23 Operating Budget includes \$5,292,619 in 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 22/23.

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 District's Property Insurance policy, written by AIG, covers buildings, equipment and other property at SF Toll Plaza, Ferry Terminals, and Bus facilities. 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, the San Rafael Transit Center and the 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.

The property insurance market has been challenging in recent years given losses from wildfire, riots and major freeze events. The good news is there has been improvement in the market compared to last year with an increased availability of insurance. Many organizations are still seeing rate increases of over 10% to 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 has unique assets including piers, wharves and docks in addition to buildings and other assets at bus facilities, the toll plaza, etc., which limits the number of insurance carriers willing to quote this coverage for the District.

The District's total insurable values have increased 12% from \$166 million to \$186 million given the addition of assets and some appreciation in the replacement cost values. The District's property program now has a \$250,000 deductible. The District obtained a better than market rate renewal with only a 2% rate increase. Therefore, the Property premium for FY 22/23 is \$652,862.

The District's Excess Earthquake and Flood insurance coverages will renew on July 1, 2022 for a premium of \$153,492, which is a small reduction in rate offset by increased values, which is an excellent result.

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 value for these buses is \$12,695,680. The FY 2021/2022 annual premium for this coverage provided by Markel is \$29,493. For July 1, 2022, the premiums remained flat at \$29,493.

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 \$835,847, a 12% increase over the expiring Property Insurance Program policies covered in this report. The FY 22/23 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 22/23 Budget. The allocation of \$1.3 million to the restricted contingency reserve will not have a net fiscal impact to the District in FY 22/23. The \$1.3 million will be transferred to the Restricted Bridge Self-Insurance Reserve Fund.

Premium Summary

Premiums	2021	2022	% Change
GL/AL Excess Liability *	\$3,680,077	\$4,535,721	23.25%
Excess WC	\$419,895	\$417,986	-0.45%
Public Officials/EPL	\$186,540	\$222,960	19.52%
Crime	\$4,724	\$4,231	-10.44%
Cyber	\$58,822	\$96,616	64.25%
Fiduciary Liability	\$15,168	\$15,105	-0.42%
Environmental Liability	\$66,789	3-Year Pre-Paid in 2021	N/A
Subtotal Liability	\$4,432,015	\$5,292,619	19.42%
Property	\$574,252	\$652,862	13.69%
Excess EQ and Flood	\$139,460	\$153,491	10.06%
Bus Physical Damage	\$29,493	\$29,493	0.00%
Subtotal Property	\$743,205	\$835,847	12.47%
Total Program Premium	\$5,175,220	\$6,128,466	18.42%

* This is a "not to exceed" (NTE) premium estimate as negotiations are ongoing.