



Agenda Item No. (6)

To: Finance-Auditing Committee/Committee of the Whole
Meeting of June 22, 2023

From: Kelli Vitale, Director Risk Management and Safety
Kellee J. Hopper, Deputy General Manager, Administration and Development
Joseph M. Wire, Auditor-Controller
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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:

1. Approve the Liability Insurance Program, effective July 1, 2023, as follows:
 - a. 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 \$3,769,158 for a one-year term. The Golden Gate Bridge, Highway and Transportation District's (District) insurance brokers are continuing negotiations with various potential insurers (some of which currently provide coverage to the District) including Allied Public Risk, Safety National, Inigo, MAP, AWAC, Westchester, Westfield, Hiscox, Canopus, Convex, Hamilton Re, Aspen, Sompco, Apollo, Liberty, Munich Re, 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 is looking at a higher self-insured retention of \$7.5 million on Auto Liability for a premium savings. While that's a significant increase in self-insured retention from \$5 million to \$7.5 million for Auto Liability losses, the premium savings is about \$700,000 between the two options.

The insurance broker will be working through the first weeks of June to negotiate the best possible insurance program for the District at this higher Self-Insured Retention amount. 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 \$3,769,158.

- b. 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 \$1,250,000 for each accident, with a \$25 million limit, for an annual premium of \$390,504.
- c. 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 \$1,000,000 self-insured retention for claims concerning Class Actions or Layoffs. The annual premium for this policy is \$186,401.
- d. 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;
- e. Renew the Crime Insurance Program with F&D/Zurich Insurance Company, for the second year of a three-year term with a \$25,000 deductible and \$1 million limit for an annual premium of \$3,597; and,
- f. Renew the Cyber Liability Program with Resilience for a one-year-term. The program has a \$5 million limit and \$250,000 for Social Engineering Fraud. The coverage has a \$100,000 Self -Insured Retention for a premium of \$79,449.

The Finance-Auditing Committee also recommends that the Board of Directors:

2. Approve the Property Insurance Program, effective July 1, 2023, as follows:

- a. Renew the property insurance program with AIG for buildings and facilities with a \$250,000 deductible for a premium of \$855,907, and the excess earthquake and flood insurance program for a premium of \$192,792.
- b. Delegate to the General Manager the authority to purchase the Marin Transit Bus Property Damage Program with actual cash value basis and a deductible of \$50,000 with Markel for a premium of not more than \$44,210. The quotation was not available at the time of this report, but we have provided this amount as a conservative estimate; and,
- c. Continue to allocate monies to the Restricted Contingency Reserve, for FY 23/24, 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 Adopted FY 23/24 Operating Budget for the Bridge, Bus, Ferry, and District divisions.

This matter will be presented to the Board of Directors at its June 23, 2023, 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 includes the allocation of monies to the Restricted Contingency Reserve. All policies in this report expire on June 30, 2023.

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 and Property Insurance Programs 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 broker to seek more favorable terms for the District on the Excess Liability program and the Physical Damage Insurance for Marin Transit Buses— 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, 2023, 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
- Environmental Pollution Liability Insurance
- 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, and public officials' 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 the expiring program are \$4,377,197.

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 liability insurance for bus operations as follows:

- Recent large settlements
- California locale
- Overall poor experience with auto/bus risks
- Nuclear verdicts/social inflation (a.k.a. exceptionally high jury awards)

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 high premium numbers. The District's current lead Excess Liability carrier, Allied Public Risk (APR), has been an excellent District partner since 2014 and will provide the same \$5 million limit and Self-Insured Retention levels this year.

The District has recommended an increased Self-Insured Retention of \$7.5 million compared to \$5 million for Auto Liability losses. While a significant increase, the premium savings between the two options is about \$700,000. Given that the District has paid only one claim above \$5 million in the last ten years, we think that this increased Self-Insured Retention is a worthwhile premium savings for the District. The incremental losses from \$5 million to \$7.5 million are estimated at \$331,000.

The District's insurance broker is contacting 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 up to \$85 million in policy limits, at the current limits and Self-Insured Retention structure. The broker expects a premium for the \$85 million tower of \$4,478,692, which is about \$100,000 more in premium than last year, or only a 2% increase. However, the District has recommended the higher Auto Liability Self-Insured Retention of \$7.5 million, thereby reducing the premiums about \$700,000 to approximately, 3,769,158. This is a 14% premium decrease compared to last year's premium of \$4,377,197.

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 has historically self-insured the first \$1 million 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 have been 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 of timely claims closure; we therefore achieved better than market results. The expiring FY 22/23 premium was \$417,986, based on the District's job classifications and payroll of \$74,071,600. For the upcoming 7/1/23-6/30/24 insurance renewal, the District elected to increase its self-insured retention to \$1,250,000 given its excellent loss experience, for a \$27,481 premium savings compared to last year. The renewal premium is \$390,504 based on a payroll of \$74,141,651.

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 22/23 was \$15,105 and the premiums are the same this year at \$15,105.

D. Public Officials 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 public transit clients. As a result, there are a limited number of insurers offering this coverage, and the premiums have historically increased every year by 20%.

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) is \$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 expiring premium is \$222,960. For the renewal, Ironshore quoted at the same \$2M limit and but with improved Self-Insured Retentions of \$250,000 for D&O and EPL claims at a 16% lower premium of \$186,401. This improvement was due to a competitive option from another insurance carrier which provided some negotiating leverage with the incumbent (Ironshore), and the District's good loss experience.

The District's Excess Liability program described 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 above 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 two years ago, and the additional premium costs were deemed cost 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 2022/2023 was \$3,597 for this coverage and was written by Zurich Insurance. For the renewal, the premium is flat at \$3,597, which is an annual premium and is part of a three-year Crime policy that commenced on July 1, 2022.

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, 2023, and the next renewal will not occur until 2024.

G. Cyber Liability

The Cyber Liability Insurance market was very difficult last year, 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 public entities as highly targeted industries, due to 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. As a result, many insurance carriers stopped writing Cyber insurance for public entities.

The Cyber Liability insurance market is improving this year, especially for those organizations with strong cyber security controls, such as the District. The District's expiring insurance program with Resilience has a \$2 million limit, which also includes some coverage for Social Engineering Fraud insurance at a \$250,000 limit. The Self-Insured Retention was \$250,000 and an annual premium of \$95,674.

Given the District's focus on robust cyber security, Resilience offered competitive July 1, 2023, insurance renewal options. Because public entities remain a targeted class for these types of claims, it makes sense to increase the insurance limit back to \$5 million this year. Resilience offered a \$5 million limit with a \$100,000 Self-Insured Retention for a premium of \$79,449, which is what staff is recommending. This premium is \$16,225 less than expiring for higher limits and a lower Self-Insured Retention.

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 is now being impacted by some catastrophic (i.e., hurricane/earthquake/flood/wildfire) losses that are occurring with increasing frequency. Last year, there were 15 distinct billion-dollar weather and climate related disasters in the U.S. culminating in Hurricane Ian, which is currently estimated at \$120 billion in damages. The result of these losses are increases in property renewal rates of between 15% to 150%.

The District's current insurer, AIG, paid a large loss of \$1.4 million this year, and the District has had a recent property loss in May. 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 5% from \$186 million to \$195 million given some appreciation in the replacement cost values. The District's property program now has a \$250,000 deductible. The District is seeing a 26% rate increase, which is still a good result at the lower end of the range. Therefore, the Property premium for FY 23/24 is \$855,907. AIG did offer a higher \$450,000 deductible option for a \$20,000 premium savings, which is not a viable option given the \$200,000 increase in the deductible.

The District's Excess Earthquake and Flood insurance coverages will renew on July 1, 2023 for a premium of \$192,792, which is about a 20% rate increase. This increase occurred for the same reasons stated above with the hardening property market, due to catastrophe risks.

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 25 District buses whose titles were transferred to Marin Transit effective July 1, 2015. The value for these buses is \$14,189,935. The FY 22/23 annual premium for this coverage provided by Markel was \$29,493. For July 1, 2023, Markel has not yet quoted at the time of this report, but we have provided a conservative premium estimate of \$44,210.

C. Bridge Self-Insurance Loss Reserve

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

Fiscal Impact-Liability and Property Programs

The Fiscal Impact of renewal of the Liability and Property insurance programs for FY 23/24 is estimated to be \$5.5 million, or approximately a 7% decrease from last year. There is the potential that the cost of the renewal will be less if the insurance broker is able to negotiate lower rates on the two open items: the Excess Liability insurance and the Marin Transit bus fiscal damage insurance. In addition to the \$5.5 million, the District will continue funding the Restricted Bridge Self-Insurance Reserve Fund, with an investment of \$1.3 million which will be transferred to the Restricted Bridge Self-Insurance Reserve Fund. Funds will be included in the FY 23/24 Adopted Budget to cover these costs.

Premium Summary

Premiums	2022	2023	% Change
GL/AL Excess Liability	\$4,377,197	\$3,769,158	-14%
Excess WC	\$417,986	\$390,504	-7%
Public Officials/EPL	\$222,960	\$186,401	-16%
Crime	\$3,597	\$3,597	0%
Cyber	\$95,674	\$79,449	-17%
Fiduciary Liability	\$15,105	\$15,105	0%
Environmental Liability	3 year Pre-Paid in 2021	3 year Pre-Paid in 2021	n/a
Subtotal Liability	\$5,132,519	\$4,444,214	-13%
Property	\$652,862	\$855,907	31%
Excess EQ and Flood	\$153,491	\$192,792	26%
Bus Physical Damage	\$29,493	\$44,210	50%
Subtotal Property	\$835,846	\$1,092,909	31%
Total Program Premium	\$5,968,365	\$5,537,123	-7%