



## Board Report

File #: 2017-0306, File Type: Program

Agenda Number: 10.

### FINANCE, BUDGET AND AUDIT COMMITTEE JUNE 14, 2017

**SUBJECT: EXCESS LIABILITY INSURANCE PROGRAM**

**ACTION: PURCHASE EXCESS LIABILITY INSURANCE**

#### **RECOMMENDATION**

AUTHORIZE the Chief Executive Officer to negotiate and award excess liability insurance policies with up to \$300 million in limits at a cost not to exceed \$4.5 million for the 12-month period effective August 1, 2017 to August 1, 2018.

#### **ISSUE**

The excess liability insurance policies expire August 1, 2017. Insurance underwriters will not commit to final pricing until roughly six weeks before our current program expires on August 1. Consequently, we are requesting a not-to-exceed amount for this renewal pending final pricing and carrier identification. Metro is required by some shared use agreements with the freight railroads (Attachment A) to carry excess liability insurance. 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, Wells Fargo Insurance Services (“Wells”), is responsible for marketing the excess liability insurance program to qualified insurance carriers. Quotes are in the process of being received by our broker from carriers with A.M. Best ratings indicative of acceptable financial soundness and ability to pay claims.

The casualty insurance market for the transportation sector is undergoing change with insurers revisiting their underwriting methods after many years of declining real premium rates. In past years, Metro was able to add the Expo Line to Santa Monica and the Gold Line Extension to Azusa for no additional premium. Over the last several years; however, the insurance industry’s assessment of transportation and transit risks has deteriorated for a variety of factors.

High profile rail accidents in the Northeast commuter rail corridor, a derailment at the CTA’s O’Hare Airport Station, a SEPTA derailment and continuing safety concerns at WMATA have negatively affected rail liability insurance pricing. Liability insurance coverage for our bus system has also been negatively affected because of the substantial increase in nationwide and California highway

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fatalities. For example, the National Safety Council has recently reported that California highway fatalities are up 18% between 2014 and 2016. Finally, competitive pressure, which has kept prices low in California, is lessening, because of industry concerns regarding California public entity loss experience. Two years ago, a leading public entity insurer, CV Starr exited the public entity liability insurance business in California altogether. This year, another leading public entity insurer, National Casualty (Scottsdale), will be exiting the California public entity marketplace. Both of these insurers were represented in prior years on Metro's liability insurance tower and have been, or will be replaced. Although negotiations are ongoing with replacements for National Casualty, a premium increase is expected in the replacement's layer of participation and possibly up Metro's tower of insurance. Attachment B shows Metro's current liability insurance carriers.

Staff and Wells developed a 2017/2018 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 added over the past years in order to mitigate insurer's concerns with increased operating exposures. Second, we wanted to maintain a diversified mix of international and domestic insurers to maintain competition and reduce our dependence on any single insurance carrier including replacing our second tier carrier. Third, we desired to maintain total limits of \$300 million while maintaining a \$7.5 million self-insured retention.

Wells Fargo is presenting the submission to several competing insurers in order to create competition in the layers of our insurance program. Our broker contacted the markets in April and is conducting a global search to replace National Casualty. Insurance executives both nationally and internationally expressed continuing increased underwriting discipline in particular for transportation risks. In that context, insurers asked for detailed loss information on Metro risks. Insurers perform detailed actuarial valuations on our book of business to establish their premiums. We are awaiting final insurance quotes from our broker.

Metro continues to benefit from favorable pricing in the market place. Last year, we obtained \$300 million in coverage with \$7.5 million retention for \$3.75 million. We are anticipating a roughly flat renewal with pricing within 5% of last year's pricing, and possibly no increase in pricing. To cover an unexpected quote, we are asking the Board's approval for a not-to-exceed \$4.5 million.

Attachment C provides an overview of the current program, renewal options and estimated associated premiums, and the agency's loss history. The Recommended Program, Option A, retains total limits of \$300 million with \$7.5 million retention and provides terrorism coverage at all levels.

### **DETERMINATION OF SAFETY IMPACT**

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

### **FINANCIAL IMPACT**

The funding for eleven months of \$4.4 million for this action is included in the FY18 budget 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

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Transportation, 320011 - Union Station, and 405533 - Commuter Rail in account 50602 (Ins Prem For Gen Liability). The remaining month of premiums will be included in the FY19 budget, 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 FY17, an estimated \$3.7 million will be expensed for excess liability insurance.

### Impact to Budget

Approval of this action has no impact on the FY18 budget. The current fiscal year funding for this action will come from the Enterprise, General and Internal Service funds. No other sources of funds were considered because these are the activities that benefit from the insurance coverage. This activity will result in a negligible change to operating costs from the prior fiscal year.

### ALTERNATIVES CONSIDERED

Various deductibles and limits of coverage options were considered as described in Attachment C. Our estimated penetration of the excess layer and premium history is also shown in this attachment. Option A maintains \$300 million limits with a SIR of \$7.5 million. This option conforms to the minimum \$295 million liability cap as required by the FAST Act. Option B maintains \$300 million limits but increases the SIR to \$8 million. Option B is not recommended because the estimated cost of retaining a loss exceeds the cost benefit of decreasing the total premium.

### NEXT STEPS

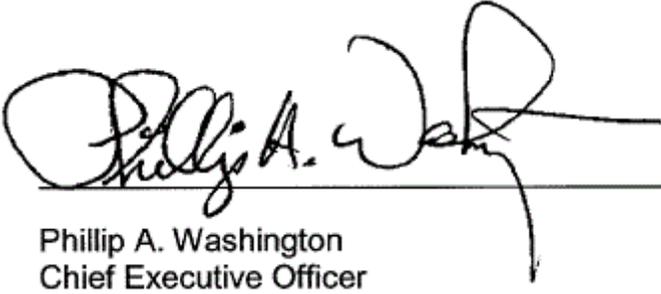
Upon Board approval of this action, we will advise Wells to proceed with placement of the excess liability insurance program outlined herein effective August 1, 2017.

### ATTACHMENTS

Attachment A - Shared Use Agreements with the Freight Railroads  
Attachment B - 2016/2017 Liability Insurance Carriers  
Attachment C - Options, Premiums and Loss History

Prepared by: Tim Rosevear, Manager, Financing Manager, (213) 922-6354

Reviewed by: Greg Kildare, Chief Risk, Safety and Asset Management Officer, (213) 922-4971



Phillip A. Washington  
Chief Executive Officer

## ATTACHMENT A

### SHARED USE AGREEMENTS WITH THE FREIGHT RAILROADS

Insurance excerpt from the Pasadena Subdivision, Los Angeles County Agreement with BNSF Railway effective March 31, 2011:

#### “ARTICLE 20. EAST END SEGMENT: INSURANCE

20.4 The Parties may renegotiate the limits of coverage of both Parties every 5 years upon 1 year notice, or if federal legislation limiting liability for passenger rail service is overturned, revoked or otherwise becomes ineffective as the result of a federal statutory change or a final, non-appealable, court ruling, or if federal legislation reduces liability limits. Except with respect to a change in insurance caused by the events regarding federal legislation described in the preceding sentence, any renegotiation shall be based on the national CPI-U and prevailing conditions in the liability insurance market, take into account any safety improvements or enhancements implemented by one or both parties or installed on one or more of the covered rail lines, and any dispute shall be resolved by arbitration in accordance with the procedures set forth in Article 12 of the SUA; such adjustments shall also apply to the self insured retention or deductible.

20.5 Agency shall not be required to maintain liability coverage above limits set by federal legislation applicable to passenger or commuter rail operations, but in no event shall Agency maintain coverage of less than \$200 million per occurrence, except as expressly provided in Section 20.1 above. Agency also shall not be required to maintain liability coverage in excess of \$200 million for any year that would result in its having to pay 125% of the prior year's premium amounts (except for the initial purchase pursuant to this Article 20).

**ATTACHMENT B**

**2016/2017 LIABILITY INSURANCE CARRIERS**

Excess Limit		Layer(s)	Participation	Carrier
<b>\$300M</b>	Excess Liability	<b>\$50M xs \$250M</b>	\$25,000,000 \$12,500,000 \$12,500,000	Apollo Novae StarStone
<b>\$250M</b>	Excess Liability	<b>\$50M xs \$200M</b>	\$35,000,000 \$15,000,000	Argo Re Swiss Re
<b>\$200M</b>	Excess Liability	<b>\$100M xs \$100M</b>	\$40,000,000 \$25,000,000 \$12,500,000 \$12,500,000 \$10,000,000	Aspen Iron-Starr Endurance Specialty Canopus Argo Re
<b>\$100M</b>	Excess Liability	<b>\$50M xs \$50M</b>	\$15,000,000 \$15,000,000 \$10,000,000 \$10,000,000	Great American AWAC XL Insurance America Ironshore
<b>\$50M</b>	Excess Liability	<b>\$10M xs \$40M</b>	\$10,000,000	XL Insurance America
<b>\$40M</b>	Excess Liability	<b>\$10M xs \$30M</b>	\$10,000,000	Great American
<b>\$30M</b>	Excess Liability	<b>\$10M xs \$20M</b>	\$10,000,000	Endurance American
<b>\$20M</b>	Excess Liability	<b>\$10M xs \$10M</b>	\$10,000,000	National Casualty
<b>\$10M</b>	Primary Liability	<b>\$10M Primary</b>	\$10,000,000	Peleus (Trident)
<b>Total Limits</b>		<b>\$300,000,000</b>		

**ATTACHMENT C**

**Options, Premiums and Loss History**

**Current Insurance Premium and Proposed Options**

	CURRENT PROGRAM	OPTIONS (Estimated)	
		A	B
Self-Insured Retention	\$7.5 mil	\$7.5 mil	\$8.0 mil
Limit of Coverage	\$300 mil	\$300 mil	\$300 mil
Terrorism Coverage	Yes	Yes	Yes
Premium	\$3.75 mil	\$4.5 mil	\$4.3 mil

**Premium History for Excess Liability Policies  
Ending in the Following Policy Periods**

	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017
Self-Insured Retention	\$4.5 mil	\$4.5 mil	\$4.5 mil	\$5.0 mil	\$5.0 mil	\$7.5 mil	\$7.5 mil	\$7.5 mil	\$7.5 mil
Insurance Premium	\$4.3 mil	\$3.8 mil	\$3.8 mil	\$3.9 mil	\$3.9 mil	\$3.6 mil	\$3.7 mil	\$3.6 mil	\$3.7 mil
Claims in Excess of Retention	3	1	0	0	2 *	1	0 (est.)	0 (est.)	0 (est.)
Estimated Amount in Excess of Retention	\$14.8 mil	\$1.0 mil	0	0	\$5.4 mil *	\$1.3 mil	unknown	unknown	unknown

\* 1 pending (open case)