



**ITEM ID:** 2023-261-0

**TRANSMITTAL DATE:** June 16, 2023

**MEETING DATE:** June 23, 2023

**TO:** Board of Directors

**FROM:** Don O. Del Rio, General Counsel

**SUBJECT:** Annual Renewal of Insurance Program for 2023-24 Fiscal Year

### **Issue**

The Authority requires insurance to effectively manage its operating and other major risks and ensure its continued economic viability in the event of a catastrophic event. Authorization is required to renew the listed insurance policies for Fiscal Year 2023-24.

At the present time staff seeks approval to renew the coverages identified below:

- Operating General Liability ("OGL");
- Terrorism Liability;
- Employment Practices Liability ("EPLI");
- Pollution Legal Liability;
- Property;
- Boiler and Machinery;
- Terrorism Property (including active shooter coverage);
- Auto Fleet Insurance;
- Errors and Omissions;
- Crime;
- Security and Privacy; and
- Workers' Compensation.

All current insurance policies expire June 30, 2023. Marsh, Inc., is providing brokerage services for the insurance renewal procurement and they are supported by Price Forbes in London. The costs quoted in this presentation reflect net premium paid by the Authority and include estimated fees and taxes, as applicable.

### **Recommendation**

It is recommended that the Board authorize the Chief Executive Officer to purchase insurance for the 2023-2024 insurance year for total premium cost not to exceed \$16,963,086, as indicated below.

### **Strategic Commitment**

This report aligns with the Strategic Business Plan commitment of:

- **Modernizing Business Practices:** The liability insurance market for commuter rail is changing every year, making it increasingly challenging to build the portfolio of insurance needed for Metrolink. As a result, Risk Management is beginning the procurement for these services earlier each year and yet insurers have consistently resisted providing timely renewal quotations.

### **Discussion**

Insurance is a contractual arrangement whereby the Authority may transfer certain risks to insurers, thereby protecting its assets from destruction or its monetary resources from depletion. By doing this, the Authority is able to ensure its continued viability in the event of specified loss events.

It is recommended that the Authority purchase the following:

1. Liability related coverages for a total cost of \$9,096,296, including:
  - a. OGL insurance with annual liability limits of \$347.5 million dollars (with an approximate \$5M Self-Insured Retention);
  - b. Terrorism coverage of \$50 million (with a \$4M Self-Insured Retention);
  - c. Employment Practices Liability with limit of \$5 million; and
  - d. Pollution Legal Liability with limit of \$25 million.
2. Property related coverages for a total not-to-exceed cost of \$6,860,809, including:
  - a. Property insurance with annual liability limits of \$100 million dollars for an estimated premium not to exceed \$6.7 million (the property tower has yet to be finalized. We seek authority to expend up to the aforementioned amount to secure \$100 million of coverage for the Authority's property on the best available terms and conditions);
  - b. Terrorism property coverage of \$10 million including active shooter coverage;
  - c. Boiler and machinery coverage.
3. Automobile fleet coverage for an estimated premium of \$384,804, subject to adjustment based on an audit of the composition of the fleet during the policy term.
4. Workers' Compensation Insurance coverage for an estimated premium of \$513,749, subject to adjustment based on an audit of the actual payroll and workforce composition during the policy term.

Miscellaneous Insurance including Public Officials Errors and Omissions, Crime Insurance and Security and Privacy coverage for an aggregate total cost of \$107,428.

### ***Liability and Related Insurance Policies***

The OGL insurance program ensures that the Authority will have the financial resources to continue operations in the event of a catastrophic incident causing injuries to passengers or third parties and/or damage to their property. The Authority also must comply with the terms of various contracts which require it to insure its operations against loss in OGL, property and automobile liability exposures.

The Authority's OGL policy is an indemnity type policy which is written on an "occurrence reported" basis. The policy is subject to an annual aggregate, meaning claims paid under the policy erode available limits for the balance of the policy year. Once one or more claims are paid in amounts totaling the policy limit, the insured subsequently will be without coverage for any future claims during that policy year. However, the policy contains a reinstatement clause which provides that, if a policy limit incident occurs, the Authority has the option to reinstate the full amount of the initial policy at 125% of initial premium.

Beginning in early 2023, the Authority and Marsh undertook a comprehensive marketing program designed to increase interest within the underwriter community, increasing competition and attempting to manage insurance costs. The insurance renewal marketing program discusses the status of the Metrolink system in terms of ridership and route miles, as well as operating and engineering enhancements such as the continued refinement of the Positive Train Control (PTC) system, the use of Crash Energy Management cars, grade separations, upgrades of advanced warning devices, and the safety culture within the organization. On the other side of the ledger, the Authority continues to face challenges as a result of a tightening casualty insurance market, as well as the Authority's loss history, particularly the continuing pressure from the payouts related to the Rice Road crossing incident and derailment in Oxnard on February 24, 2015.

This year the Risk Manager returned to in-person presentations and addressed approximately two dozen underwriters representing the major U.S. and international insurance markets which write insurance for the rail industry.

The Authority's presentations emphasized ways it continues its commitment to safety. The theme of this year's presentation was similar to that of recent years -- that Metrolink is an industry leader in terms of safety technology and culture, particularly being one of four railroads to fully implement and certify interoperable PTC throughout our system with all railroads with which we share rights of way and the incorporation of crash energy management cars into our operations.

A combination of continued deterioration in casualty losses in terms of both frequency and severity, has caused reinsurance costs for syndicates to increase markedly and this caused insurance carriers to reduce capacity or leave the U.S. casualty market completely and has also increased premiums. Social inflation is a recurring refrain among insurers, as they see more frequent extreme verdicts and increased litigation costs driving their financial performance.

In summary, we have worked all available global insurers as thoroughly as possible and were able to construct a tower with coverage of \$347.5 million, approximately \$20 million in excess of the Federal passenger liability cap, at a premium of \$8,445,753, very nearly that of last year. Insurers continue to moderate anticipated premium increases because of the reduced risk exposure resulting from Metrolink's reduced passenger volumes.

The Terrorism Stand Alone policy continues to be a very stable component of the liability program. This was quoted by Lloyds at \$258,504, an approximate 5% increase relative to the expiring premium.

The Employment Practices Liability (EPLI) coverage had been a challenging placement for the Authority historically. The Authority's loss history has now been favorable for many years but the market, particularly for EPLI in California, is quite challenging. This coverage was quoted by Beazley, the incumbent and dominant participant in this market, at \$301,286, a small decrease relative to last year's premium and reflective of the Authority's exemplary recent loss history but its location in California, a market with increased exposure in this line of coverage.

Pollution Legal Liability has been sourced through Ironshore Specialty Insurance Company (A Rated), the same carrier as last year, and is priced at \$90,753, an approximate 3% increase relative to last year's cost. This policy continues to reflect an increased deductible for any potential loss associated with the Authority's aging underground storage tanks.

The grand total for liability and related coverages is \$9,096,296. This is very nearly flat compared to last year's expense of \$9,093,773. A comprehensive table of proposed liability related coverages, insurers and quotations is attached as Attachment A.

### ***Property and Related Insurance***

Property insurance indemnifies the Authority for loss due to significant damage to or destruction of the Authority's assets from covered perils. For property insurance coverage, the Risk Manager and our primary insurance broker, Marsh, have been exploring all available renewal options in both domestic and foreign property markets. The Authority faces the same opportunities and challenges with the renewal of its property insurance as with its OGL policies. The hardening market was again a significant obstacle to cost effective renewal for our property tower. Across the board, insureds are seeing premium rate increases, typically ranging from 50-100%. The industry wide market conditions were aggravated by the Authority's recent loss history with the San Clemente earth movement claims and, to a lesser extent, the 2015 Oxnard loss.

There are two main components that interrelate in setting property insurance premium costs, the Schedule of Insurable Values (SOV) and Property Loss History. With the exception of San Clemente, the Authority's property and liability insurance programs share the same recent loss history in general terms.

Also driving premium cost is the Authority's Schedule of Values (SOV), the listing of the Authority's insured assets and properties, which currently stands at \$2.252 billion, up from \$2.063 billion last year almost exclusively as a result of inflation.

Staff's presentation to the property insurance market again focused on the improving risk characteristics as a result of PTC, the Crash Energy Management systems employed in its new fleet of coaches, additional grade crossing improvement projects, grade separations, and increased track capacity.

Unfortunately, the property insurance market is extremely unsettled at the present time. Insurers have been hit by unusually heavy losses in other industries and markets in recent

years causing substantial increases in premiums across all industries in order to ensure insurers' economic viability. In some cases, insurers have vacated certain industry groups as is the case on the Authority's program where Intact has elected to non-renew the \$50M xs \$50M layer. Further, the Authority's recent loss history is aggravating the circumstances. The finalization of the 2015 Rice Road (Oxnard) property claim and continued open claims related to the Cyprus Shores (San Clemente) earth movement are causing insurers to look very closely at the Authority's account, increasing pricing and, in some instances, reducing their exposure. They are reducing exposure in different ways, some seeking increased self-insured retentions, some reducing or excluding earth movement risk from covered perils, some implementing geographic exclusions for areas of known earth movement risk, specifically the San Clemente bluff area near Cyprus Shores.

Because of this insurance market turmoil, staff and brokers have been unable to solidify a complete tower of property insurance as of the writing of this report. That said, it is critical that we have replacement insurance in place when the existing policies expire on June 30. As such, we seek authority to expend up to \$6,700,000 on a property tower with limits of \$100 million on the most favorable terms and conditions to the Authority as are available in the market.

Stand Alone Terrorism Property coverage of \$10 million per occurrence is quoted by Lloyds of London at \$80,548, up from \$70,361 last year, up approximately 14% year over year. This policy includes active shooter and malicious attack coverage. Boiler and Machinery coverage quoted by Travelers Insurance Co is \$80,260.

The total cost of FY2023- 24 renewal of the Authority's Property Program shall not exceed \$6,860,809, compared with \$3,079,612 for the expiring policy year, up to an approximate 122% increase relative to last year's cost.

### ***Fleet Automobile Insurance***

The Automobile Fleet is proposed to remain with Liberty Mutual, who has quoted \$384,804; this is approximately a ten percent increase compared to the expiring premium. The carrier will complete an audit of the composition of the fleet following the completion of the policy term. The carrier will adjust the premium charges to reflect any changes to the vehicle fleet.

### ***Workers' Compensation Insurance***

In order to comply with applicable California law and the terms of its contracts, the Authority maintains workers' compensation insurance. The Authority continues to have limited options with its workers' compensation placement, primarily as a result of the class code associated with its right of way and customer engagement workers. Many carriers will not write policies which include coverage for class code 7133.

The Authority was able to obtain a renewal quotation from Liberty Mutual, \$513,749, approximately equal to last year's quoted premium. Unfortunately, many insurance carriers, including Liberty Mutual, are not interested in writing monoline auto coverage and, on a combined basis, Liberty Mutual's combined workers' compensation and automobile package has been impossible to match in the current marketplace for a number of years.

The workers' compensation premium quoted is an estimate based on our current payroll and

workforce composition. The carrier will complete an audit of the actual payroll and the workforce composition during the policy term. The carrier will adjust the premium charges to reflect any changes to the workforce affecting either of these factors.

### ***Miscellaneous Insurance***

Public Officials E&O coverage with ACE has been quoted at \$61,104, an approximate 4% increase compared to the expiring policy premium. Crime Insurance through Great American was quoted at \$9,583, a modest increase relative to the expiring premium.

In the event of a data breach, Security and Privacy risk insurance pays for the notification and monitoring for impacted customers, 3rd party liability, fines and penalties, hiring of outside computer experts, and outside PR firms. The Authority is exposed through the mobile ticketing app, the operation of its ticket vending machines as well as possession of customer information through the call center and employees' personal information. The proposed policy would provide notification and monitoring for up to 1,000,000 individuals and a \$1,000,000 limit for 3rd party liability. The premium cost for this coverage is \$36,830, compared to the expiring premium of \$30,582. While this is the second year of significant percentage premium increase, it is less than most purchasers have experienced and given the continuing threats in this area, a basic level of cyber extortion and first party coverage is advised.

### **Budget Impact**

Sufficient funding is included for this level of premiums in the proposed FY2023-2024 budget, which is contingent upon Board approval on June 23, 2023.

### **Next Steps**

The Authority will purchase insurance consistent with the Board's direction. The Board may elect to reduce limits for any of the various, except that OGL must be maintained with limits of not less than \$275 million per the Operating Contract with Amtrak and certain other agreements. The Board may also eliminate any of the other coverages not required by law or contract (such as Property, Workers' Compensation, Auto and Pollution Liability).

Prepared by: William Garrett, Senior Counsel and Risk Manager

Approved by: Don Del Rio, General Counsel

### **Attachment(s)**

[Exhibit A - Program Summary 2023-2024 Annual Renewal of Insurance Program Presentation - Annual Renewal of Insurance Program for 2023-24 Fiscal Year](#)