

**THIS PRINT COVERS CALENDAR ITEM NO. : 14**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Declining to renew liability insurance coverage for personal injury and property damage claims between a \$5 million self-insured retention amount and a maximum of \$30 million, returning the SFMTA to self-insuring such potential losses and placing on reserve the amount of the premiums for any such coverage to cover future potential claims.

**SUMMARY:**

- The SFMTA first purchased excess transit liability personal injury and property damage coverage for claims with losses and costs between \$5 million and \$30 million commencing in July 2009 and renewed such policies for FY 2011 and FY 2012.
- The City's Risk Management Division has explored renewal options for FY 2013 on behalf of the SFMTA with National Casualty Company and Endurance Risk Solutions, the insurance companies that provided coverage for FY 2012.
- A new policy would be for one year, with a \$30 million limit and a \$5 million self-insured retention, subject to approval by the City Attorney's Office of the insurance policy's endorsement terms.
- The premium payment for a new policy would be \$2,425,921 for FY 2013, paid from the FY 2013 Operating Budget from the self-insured claims line item.
- The SFMTA has not received reimbursement for any liabilities under this insurance during fiscal years 2010, 2011 and 2012 because there have been no events during this time period that have led to claims exceeding the \$5 million self-insured retention amount.
- The Board could opt to (1) decline to renew the FY 2013 coverage, return to completely self-insuring losses and place an amount equivalent to the premium on reserve to help cover future large claims, (2) decline to place this coverage and not place the premium amount on reserve or (3) authorize the renewal of insurance for the FY 2013 fiscal year.

**ENCLOSURES:**

1. SFMTAB Resolution

**APPROVALS:**

**DATE**

DIRECTOR \_\_\_\_\_

6/12/12

SECRETARY \_\_\_\_\_

6/12/12

**ASSIGNED SFMTAB CALENDAR DATE:** June 19, 2012

## **PAGE 2**

### **PURPOSE**

This calendar item approves the staff recommendation to decline renewal of excess transit liability coverage that the SFMTA first purchased for FY 2010 and return the SFMTA to self-insuring losses and annually placing on reserve the amount of these premiums for any such coverage to help cover potential future large claims.

### **GOAL**

This item will meet the following goal and objectives of the SFMTA Strategic Plan:

Goal 3, Improve the environment and quality of life in San Francisco

3.3 Allocate capital resources effectively

3.5 Reduce capital and operating structural deficits

### **DESCRIPTION**

The SFMTA purchased excess transit liability coverage for claims with personal injury and property damage losses and costs between \$5 million and \$30 million commencing in July 2009 and renewed such policies for FY 2011 and FY 2012.<sup>1</sup> The SFMTA paid premiums of \$2,433,000 for the FY 2010 policy (paid from the FY 2010 Operating Budget), \$2,433,000 for the FY 2011 policy (paid from the FY 2011 Operating Budget) and \$2,418,990 from for the FY 2012 policy (paid from the FY 2012 Operating Budget). The SFMTA has not received reimbursement for any liabilities under this insurance during fiscal years 2010, 2011 and 2012 because there have been no events during this time period that have led to claims exceeding the \$5 million self-insured retention amount.

The City's Director of Risk Management has explored renewal options for FY 2013 on behalf of the SFMTA with National Casualty Company and Endurance Risk Solutions, the insurance companies that provided coverage for FY 2012. According to the Director of Risk Management, that office did not undertake a full marketing survey for the upcoming fiscal years since the industry standard is to do so every second or third year with renewal quotes in between. The Director of Risk Management did solicit quotes from alternative carriers in 2011 and received one additional quote which was not as competitive as the quote from National Casualty Company and Endurance Risk Solutions.

A new policy from National Casualty Company and Endurance Risk Solutions would be for one year, with a \$30 million limit and a \$5 million self-insured retention, subject to advance approval by the City Attorney's Office of the insurance policy's endorsement terms. The Board would authorize the premium payment of \$2,425,921 for FY 2013 for the policy from the FY 2013 Operating Budget from the self-insured claims line item. While the Board approved these

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<sup>1</sup> The existing policies also include employment practices liability, errors and omissions liability and employee benefit liability coverage at no additional cost to the SFMTA.

## **PAGE 3**

payments for FY 2013 in the budget, Board action would be required to support the Risk Management Division's execution of the policies for FY 2013.

While no general survey of liability insurance coverage among other transit agencies could be found, information for some other Bay Area transit agencies has been obtained. Caltrain/Samtrans, the Santa Clara Valley Transportation Agency (VTA) and the San Francisco Bay Area Rapid Transit District (BART) maintain transit/railroad liability insurance. The policies/programs for these transit agencies have a range of coverage, with upper limits of approximately \$100 million for some, as well as varying retention/deductibles and premiums. The SFMTA was not able to secure such high levels of coverage at the program's inception in FY 2010. The Director of Risk Management has said that it is not possible to do a true side by side comparison of premiums since insurance program structures and policy terms, as well as underwriting risks, are different between different agencies.

The City Attorney's Office has reviewed this report.

### **ALTERNATIVES CONSIDERED**

There are three alternatives:

1. The Board could decline to place the FY 2013 coverage, return to completely self-insuring losses and annually place the amount of these premiums on reserve to cover any future claims (the recommended alternative).
2. The Board could decline to place the FY 2013 coverage and return to completely self-insuring losses without placing the premiums on reserve.
3. The Board could authorize placement of insurance for the FY 2013 fiscal year.

Based on the following criteria, it is recommended that the Board discontinue the excess coverage:

- There has only been one event during the past decade that exceeded the \$5 million retention amount;
- Since FY 2010, when the coverage was first placed, there have not been any incidents that have exceeded the \$5 million retention amount;
- The \$30 million upper limit will not cover a catastrophic event which is the purpose of excess coverage (other agencies have \$100 million upper limits);
- The \$7.3 million paid for three years of premiums could have been instead used for service delivery;
- California law authorizes public entities to pay a judgment in up to 10 installments where the court confirms this is necessary to avoid an unreasonable hardship. CA Gov. Code, §970.6. An additional statute authorizes public entities to pay judgments over time without court approval where the judgment exceeds a threshold amount. The threshold is adjusted annually and currently falls below the \$5 million self-insured retention amount. CA Gov. Code §984.

## **PAGE 4**

- Excess liability carriers typically reserve authority to select defense counsel for litigation over claims that may implicate their coverage. Given the Charter's designation of the City Attorney's Office as legal counsel to City departments, the former and current excess carriers have reviewed and approved representation by the City Attorney's office rather than their normal panel insurance defense counsel. For any new carriers, they will have to review and approve the same representation.

## **FUNDING IMPACT**

The amount for the premium for FY 2013 is included in the Operating Budget approved by the Board.

## **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

None.

## **RECOMMENDATION**

That the SFMTA Board decline to renew excess transit liability coverage for the SFMTA, return the SFMTA to self insuring losses for third party claims and annually place on reserve the amount of the currently proposed premium to help cover future large claims.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The SFMTA first purchased excess transit liability personal injury and property damage coverage for claims with losses and costs between \$5 million and \$30 million commencing in July 2009 and renewed such policies for FY 2011 and FY 2012; and

WHEREAS, The City's Risk Management Division has explored renewal options for FY 2013 on behalf of the SFMTA with National Casualty Company and Endurance Risk Solutions, the insurance companies that provided coverage for FY 2012; and

WHEREAS, A new policy would be for one year, with a \$30 million limit and a \$5 million self-insured retention, subject to approval by the City Attorney's Office of the insurance policy's endorsement terms; and

WHEREAS, The premium payment for a new policy would be \$2,425,921 for FY 2013, paid from the FY 2013 Operating Budget from the self-insured claims line item; and

WHEREAS, The SFMTA has not received reimbursement for any liabilities under this insurance during fiscal years 2010, 2011 and 2012 because there have been no events during this time period that have led to claims exceeding the \$5 million self-insured retention amount; and

WHEREAS, The SFMTA Board of Directors could opt to (1) decline to renew the FY 2013 coverage, return to completely self-insuring losses and place an amount equivalent to the premium on reserve to help cover future large claims, (2) decline to place this coverage and not place the premium amount on reserve or (3) authorize the renewal of insurance for the FY 2013 fiscal year; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors declines to renew excess transit liability personal injury and property damage insurance coverage for the SFMTA, return the SFMTA to completely self-insuring personal injury and property damage claims by third parties and place on reserve the amount of the premiums for any such coverage to help cover future potential claims.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 19, 2012.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency