

# REGIONAL TRANSIT ISSUE PAPER

| Agenda Item No. | Board Meeting Date | Open/Closed Session | Information/Action Item | Issue Date |
|-----------------|--------------------|---------------------|-------------------------|------------|
| 6               | 03/14/16           | Open                | Action                  | 03/07/16   |

Subject: Insurance Cost Related to the Federal Commuter Rail Liability Cap Increase

## ISSUE

Whether to authorize the acquisition of additional general liability insurance to comply with the terms of the agreements that the Sacramento Regional Transit District (RT) has with Union Pacific Railroad (UP).

## RECOMMENDED ACTION

Adopt Resolution 16-03-\_\_\_\_, Amending Resolution No. 15-06-0061, Authorizing Acquisition of Additional General Liability Coverage Including Public Officials Errors and Omissions, Property, Boiler and Machinery, Excess Workers' Compensation, Employment Practices Liability, Crime/Employee Dishonesty Insurance, Privacy & Network Liability and Underground Storage Tank Pollution Liability for the Period of July 1, 2015 through June 30, 2016.

## FISCAL IMPACT

|                         |                 |                    |                 |
|-------------------------|-----------------|--------------------|-----------------|
| Budgeted:               | No*             | Requested Increase |                 |
|                         |                 | This FY:           | \$ 105,287.67   |
| Budget Source:          | Operating       | Annualized Cost    |                 |
|                         |                 | of this Increase   | \$ 315,000.00   |
| Funding Source:         | Local/Federal   |                    |                 |
| Cost Cntr/GL Acct(s) or | 47 660044       | Revised Budget:    | \$ 3,033,974.67 |
| Capital Project #:      |                 |                    |                 |
| Original Budget:        | \$ 2,928,687.00 |                    |                 |

\* Funding is subject to mid-year budget revision.

## DISCUSSION

As part of the first phase of the Green Line project and as part of the South Sacramento Corridor Phase 2 (SSCP2) project, it was necessary for RT to obtain rights from UP to cross its tracks (in the case of the Green Line) or to acquire right of way and easements from UP (in the case of the SSCP2 project). As a condition of granting RT those rights, UP required that RT maintain specific liability insurance levels. While dollar amounts are stated in the agreements (\$200 million per occurrence, \$400 million aggregate), these amounts were based on and tied to the federal liability cap for passenger railroads at the time the agreements were executed. To account for the possibility that the cap could be raised in the future (creating uninsured risk), UP included language specifying "[i]f the passenger rail liability cap in 49 U.S.C. 28103 is adjusted, the per occurrence limit shall be adjusted to match the statutory cap."

On January 11, 2016, the Secretary of Transportation published a Federal Register Notice

Approved:

Presented:

Final 03/08/16

General Manager/CEO

Chief Counsel

J:\Board Meeting Documents\2016\05 March 14, 2016\Excess Insurance UP Requirements Issue Paper Revised CB.doc

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advising that the rail passenger transportation liability cap on personal injury and damage claims would increase to \$294,278,983 on February 10, 2016.

RT's Risk Management staff learned about the increase in the Federal Commuter Rail Liability Cap during a February 10, 2016 pre-renewal strategy meeting with RT's insurance broker, Aon. Thereafter, Risk Management consulted with RT's Legal and requested review of the agreements with UP. Legal confirmed that RT is required to maintain general liability coverage limits equal to the passenger rail liability cap.

Due to the limited number of insurers offering liability coverage for commuter rail entities and the across the Board need for virtually all commuter rail entities to increase coverage limits, Aon anticipated a cost of \$5,000 per \$1,000,000 of coverage.

Aon prepared a marketing submission and solicited quotes from several insurers and London Syndicates. Aon was successful in both finding an insurer that would accept the risk and provide the excess over excess coverage for \$3,500 per \$1,000,000. The coverage is being offered as a Follow Form Policy that is based on the currently in force primary excess general liability. The pro rata cost for the remainder of Fiscal Year 2016 is \$105,287.67.

Table 1 shows the prior coverage amounts, carriers and cost and the revised cost for the rest of fiscal year 2016 for General/Auto/Professional. No other coverages are being revised from the prior adopted resolution.

| Coverage                            | Carriers  | Cost            |
|-------------------------------------|---|-----------------|
| General/Auto/Professional Liability | National Casualty, Berkley National, Endurance, XL Catlin, Allied World Assurance, XL, Canopus & Argo | \$ 2,009,035.00 |
| All Other Lines of Insurance        | Various   | \$ 919,652.00   |
| Additional Requested Premium        | Lloyds of London  | \$ 105,287.67   |
| Revised Cost for G/A/PL             |   | \$ 3,033,974.67 |

Staff requests that the Board amend the renewal of the General Liability Coverage Including Public Officials Errors and Omissions, Property, Boiler and Machinery, Excess Workers' Compensation, Employment Practices Liability, Crime/Employee Dishonesty Insurance, Privacy & Network Liability and Underground Storage Tank Pollution Liability for the Period of July 1, 2015 through June 30, 2016 to include the addition of an insurer and an increase in premium cost of \$105,287.67 for General Liability Coverage.

RESOLUTION NO. 16-03-\_\_\_\_\_

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

March 14, 2016

**AMENDING RESOLUTION NO. 15-06-0061, AUTHORIZING ACQUISITION OF ADDITIONAL GENERAL LIABILITY COVERAGE INCLUDING PUBLIC OFFICIALS ERRORS AND OMISSIONS, PROPERTY, BOILER AND MACHINERY, EXCESS WORKERS' COMPENSATION, EMPLOYMENT PRACTICES LIABILITY, CRIME/EMPLOYEE DISHONESTY INSURANCE, PRIVACY & NETWORK LIABILITY AND UNDERGROUND STORAGE TANK POLLUTION LIABILITY FOR THE PERIOD OF JULY 1, 2015 THROUGH JUNE 30, 2016**

WHEREAS, on June 8, 2015 the Board of Directors renewed the General Liability Coverage Including Public Officials Errors and Omissions, Property, Boiler and Machinery, Excess Workers' Compensation, Employment Practices Liability, Crime/Employee Dishonesty Insurance, Privacy & Network Liability and Underground Storage Tank Pollution Liability for the Period of July 1, 2015 through June 30, 2016.

WHEREAS, RT's contractual obligations to Union Pacific Railroad require that RT maintain excess liability insurance coverage commensurate with the federal rail liability cap on personal injury and damage claims, as amended from time to time.

WHEREAS, on January 11, 2016, the Secretary of Transportation published a Notice advising that the federal passenger rail liability cap on personal injury and damage claims would increase from \$200,000,000 to \$294,278,983 on February 10, 2016.

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the Board hereby amends Exhibit A of Resolution 15-06-0061 to add Lloyds of London as an excess insurer for an additional \$94,278,983 in liability coverage required due to the increase in the federal passenger rail liability cap and increase the premium for General Liability Coverage by \$105,287.67.

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JAY SCHENIRER, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: \_\_\_\_\_  
Cindy Brooks, Assistant Secretary