

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT



STAFF REPORT

MEETING DATE: 4/23/2025

Staff Report No. 25-238

TO: AC Transit Board of Directors
FROM: Aimee L. Steele, General Counsel/Chief Legal Officer
SUBJECT: 2025-2026 Transit Operations Insurance Program Renewal

ACTION ITEM

AGENDA PLANNING REQUEST: ☐

RECOMMENDED ACTION(S):

Consider authorizing the General Manager to bind the District's 2025-2026 Transit Operations Insurance program.

Staff Contact:
Aimee L. Steele, General Counsel/Chief Legal Officer

STRATEGIC IMPORTANCE:

Goal - Financial Stability and Resiliency
Initiative - Financial Efficiency and Revenue Maximization

Authorizing the General Manager to bind the proposed 2025-2026 Transit Operations Insurance program will allow the District to maintain its risk retention and risk transfer programs at the current optimum levels for the 2025-2026 policy period.

BUDGETARY/FISCAL IMPACT:

The total budgetary impact of binding the proposed insurance coverages as recommended by staff will not exceed \$15,722,230.

BACKGROUND/RATIONALE:

The District's insurance program is renewed on an annual basis. The District's current insurance program includes the following coverages: excess liability (general and auto); excess workers' compensation; commercial crime; cyber-liability; fiduciary liability business travel accident; commercial property; and deadly weapons response. All coverage, except for the commercial property and deadly weapons response, will expire at 12:01 a.m., April 26, 2025.

Below are the recommended insurance renewals for the 2025-2026 Transit Operations Insurance Program:

| |
|---|
| AC Transit's Transit Operation Insurance Program |
|---|

| Insurance Coverage | PY24-25 Expiring Premium | PY25-26 Renewal Premium | Dollar Change | % Change |
|------------------------------|--------------------------|----------------------------|---------------|----------|
| Excess Liability Insurance | \$14,104,936 | Not to exceed \$15,000,000 | \$895,064 | 6.3% |
| Excess Workers' Compensation | \$474,502 | \$502,715 | \$28,213 | 5.9% |
| Commercial Crime | \$17,376 | \$17,376 | \$0 | 0.0% |
| Cyber-Liability | \$174,452 | \$164,134 | -\$10,318 | -5.9% |
| Fiduciary Liability | \$32,590 | \$32,590 | \$0 | 0.0% |
| Business Travel Accident | \$5,415 | \$5,415 | \$0 | 0.0% |

Excess Automobile and General Liability: Liability Insurance provides insurance coverage for automobile liability, premises liability, employee benefits liability, and wrongful acts liability. Placement of the District's excess liability insurance continues to be the most challenging and costly component of the District's insurance program due to the size and nature of the District's fleet, the District's loss exposures and history, and the impact of industry-wide increases in bus accidents. Additionally, social inflation of jury verdicts and their effect on claim settlement values continues to be a significant concern for insurance carriers and reinsurers, particularly in states with plaintiff-friendly legal venues. California, with an absence of tort liability caps and sovereign immunities, continues to lead nationally in disproportionate claim values and "nuclear" verdicts. At the heart of this issue is not only the increase in "nuclear verdicts" but also the entry of third-party litigation funding which is increasingly influencing claim values and litigation patterns. While capacity remains available, excess carriers are being increasingly selective, especially with public entities and auto-exposed risks, and are responding with tighter underwriting, higher attachment points, increased retentions, and premium increases. Staff continues to solicit and evaluate alternative risk transfer options that are appropriate to present to the Board for consideration.

The finalized renewal proposals for the excess automobile and general liability insurance program have not yet been presented to the District. This renewal, Alliant Insurance Services has provided two program renewal options for Consideration.

Option 1: Provides for a "not-to-exceed" renewal estimate of \$15,000,000, while retaining our current self-insured retention (SIR) rate of \$1,000,000 per occurrence for general liability and \$2,000,000 per occurrence for auto liability. This is an estimated 6.3% increase over last year's premiums. This increase is due to an approximate 2.3% increase in ridership and the concomitant increase in on-the-road loss exposures, as well as the District's loss history. For reference, the expiring 2024-25 premium was \$14,104,936.

Option 2: Provides for a "not to exceed" renewal estimate of \$13,000,000, while requiring the District to increase its SIR for both general liability (increase from \$1M per occurrence to \$2M per occurrence) and auto liability (increase from \$2M per occurrence to \$3M per occurrence). The estimated difference in premiums between option 1 and option 2 is \$2,000,000. The coverage specifications for both options are detailed in Attachment 1.

Staff is recommending that the Board authorize the General Manager to bind Option 1 as described above.

Excess Workers' Compensation: The expiring 2024-25 premium was \$474,502; the 2025-26 proposal provides for a 2-year program commitment with no more than a 2% rate increase for the 2026-27 policy term (second year). The 2025-26 premium will not exceed \$502,715 or an approximate 5.9% premium increase over the

expiring policy premium. The premium increase is due to a 4.9% increase in payroll over the 2024-25 renewal period and a 1% rate increase. The coverage specifications are provided in Attachment 2.

Commercial Crime: Commercial crime insurance covers money, securities, or other tangible property belonging to the District or for which the District becomes legally liable, for covered events such as employee theft, funds transfer fraud, etc. The crime insurance market for public entities remains a niche sector with a limited number of carriers specializing in areas such as faithful performance of duty coverage. The expiring 2024-25 premium was \$17,376; the 2025-26 proposed premium remains \$17,376, representing no increase over the expiring premium. The coverage specifications are provided in Attachment 3.

Cyber-Liability/Data Breach: This insurance provides coverage for the District's liability for a data breach in which its customers' personal information or credit card information is exposed or stolen as the result of a hacker or other criminal gaining access to the District's network. The policy also provides coverage for a variety of expenses resulting from data breaches, ransomware, and other cyberattacks including, but not limited to cyber extortion, mandated notification, costs to defend claims, fines and penalties, credit monitoring, and business interruption.

Globally, the frequency of e-crime claims, ransomware demands, and social engineering attacks continues to rise, with hacker groups becoming more aggressive and ingenious in their methods. Continued threats, including large-scale cyberattacks and email compromise incidents, are anticipated in 2025. In the third quarter of 2024, the average ransom payment for cyberattacks in the United States amounted to over \$479,000, down from \$850,000 in the third quarter of 2023. This figure has increased significantly since the first quarter of 2022 when the average amount of ransom payments in the U.S. was approximately \$212,000. These losses continue to be driven by the increasing sophistication of cyberattacks and associated increased costs of data and operational recovery, business interruption, and legally mandated notification and credit monitoring costs.

The District's Innovation and Technology team continues to proactively develop and implement policies, procedures, and controls that reduce the District's susceptibility to these risks and present a favorable underwriting profile to the market. At the 2024-25 renewal, these actions resulted in a coverage limit increase from \$3 million to \$5 million, a reduction in the District's per-claim retention from \$250,000 to \$100,000, and a premium reduction of 8.6%. The expiring 2024-25 premium was \$174,452; the 2025-26 proposed premium will not exceed \$164,134 and represents a 5.9% **decrease** over the expiring premium. The coverage specifications are provided in Attachment 4.

Fiduciary Liability: This coverage protects board officials, trustees, and professional administrator(s) of the District's 457(b) and Pension Plans, as well as the plans themselves, for Errors and Omissions (E&O) in the administration of these employee benefits programs. The policy under consideration also provides for a waiver of recourse provision which protects the board members' personal assets from potential subrogation after liability claims are paid under this coverage. The expiring 2024-25 premium was \$32,590; the 2025-26 proposed premium will again not exceed \$32,590 and represents no increase over the expiring premium. The coverage specifications are provided in Attachment 5.

Business Travel Accident: This insurance provides travel accident coverage to the District's board members, directors, officers, management, and mechanics who are in active service and traveling within the scope of

District business. Plan benefits and coverage include but are not limited to: accidental death and dismemberment benefits, emergency medical and evacuation benefits, and repatriation of remains benefits. The expiring 2022-2025 (three-year policy term) premium was \$5,415; the 2025-2028 (three-year policy term) proposed premium remains \$5,415 and represents no increase over the expiring premium. The coverage specifications are provided in Attachment 6.

ADVANTAGES/DISADVANTAGES:

Advantage(s): The recommended program, inclusive of Option 1 of the Excess Liability proposal, renews the 2025-2026 insurance coverage lines at levels that provide coverage consistent with prior policy terms and the District's risk-bearing capacity. Authorizing the General Manager to bind the proposed Transit Operations Insurance Program will allow the District to continue to maintain its risk retention and transfer strategy for the 2025-2026 policy period.

Disadvantage(s): Renewing the District's insurance program, inclusive of Option 1 of the Excess Liability proposal, as recommended will result in an overall premium increase of \$912,959, or 6.2%, over the expiring program.

ALTERNATIVES ANALYSIS:

The Board could elect to authorize increasing the District's current self-insured retentions to \$3,000,000 for both the automobile and general liability lines of coverage, respectively, as discussed under Option 2 above. While the District would realize a cost-saving in the short term, there is increased risk associated with option 2. Should the District receive two or more jury verdicts or enter into two or more settlement agreements exceeding \$3M, as a result of incidents covered by auto liability coverage during the next policy year, the District will have lost any benefit of savings on insurance premiums received by virtue of the higher SIR. For any verdicts or settlement agreement resulting from incidents covered by the general liability policy during the next policy year, two incidents exceeding the \$3M SIR would cancel any savings benefit. Additionally, when an agency raises its SIR, it is advisable to budget additional funds for potential exposure. This results in higher budgeting for expenditures or reserves while reducing expenditures of insurance premiums. Given the projected financial outlook for the upcoming fiscal years, this may be difficult to achieve. Finally, once increased, it would be extremely difficult, if not impossible, to lower the SIRs in the future. The District previously increased its auto liability SIR from \$1M to \$2M. Since this increase, it has been cost prohibitive to consider reducing the SIR back to a \$1M.

PRIOR RELEVANT BOARD ACTION/POLICIES:

SR-24-171 - Consider Authorizing the Renewal of the 2024-2025 Transit Insurance Program

SR-23-345 - Consider Authorizing the Renewal of the 2023-2024 Commercial Property and Deadly Weapons Response Insurance Programs

SR-23-224 - Consider Authorizing the Renewal of the 2023-2024 Transit Insurance Program

SR-22-309 - Consider Authorizing the Renewal of the 2022-2023 Commercial Property and Deadly Weapons Response Insurance Programs

SR-22-212 - Consider Authorizing the Renewal of the 2022-2023 Transit Insurance Program

SR-21-315: Consider Authorizing the Renewal of the 2021-2022 Commercial Property and Deadly Weapons Response Insurance Programs

ATTACHMENTS:

1. Excess Automobile & General Liability Proposal (Pending receipt)
2. Excess Workers Compensation Proposal
3. Commercial Crime Proposal
4. Cybersecurity Liability Proposal
5. Fiduciary Liability Proposal
6. Business Travel Accident Proposal

Prepared by:

Jean-Paul Popoff, Claims & Liability Manager

Approved/Reviewed by:

Aimee L. Steele, General Counsel/Chief Legal Officer

Chris Andrichak, Chief Financial Officer

Ahsan Baig, Chief Information Officer

Kathleen Kelly, Interim General Manager/Chief Executive Officer