ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

STAFF REPORT

MEETING DATE: 4/12/2023 **Staff Report No.** 23-224

TO: AC Transit Board of Directors

FROM: Michael A. Hursh, General Manager/Chief Executive Officer

SUBJECT: 2023-2024 District Transit Operations Insurance Program Renewal

ACTION ITEM

AGENDA PLANNING REQUEST: ☐

RECOMMENDED ACTION(S):

Consider authorizing the General Manager to approve and execute the renewal of the District's 2023-2024 Transit Operations Insurance Program under the terms and conditions recommended by Staff.

Staff Contact:
Jill A. Sprague, 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 Transit Operations Insurance Program will allow the District to continue to maintain its risk transfer and risk retention program at optimum levels for the 2023-2024 policy period.

BUDGETARY/FISCAL IMPACT:

The current estimated increase for the 2023-2024 insurance program represents a 4.25% increase over the last policy period. This year's budgetary impact will not exceed $13,735,567 if the Board authorizes binding the 2023-2024 insurance program as recommended by staff at the current self-insured retentions (SIR) in the automobile and general liability coverage lines and elects to include terrorism coverage. If the Board chooses to decline the terrorism coverage the total budgetary impact will not exceed $13,627,987.

BACKGROUND/RATIONALE:

The District's insurance program is renewed on an annual basis. The District's current insurance program, except for the commercial property and deadly weapons response lines of coverage, will expire at 12:01 a.m., April 26, 2023. Staff requests that the Board authorize the General Manager to bind the District's policies as recommended below.

Staff recommends the following options for the 2023-2024 Transit Operations Insurance Program renewal to the Board for consideration:

Excess Automobile and General Liability: Liability Insurance provides insurance coverage for automobile liability, premises liability, employee benefits liability, and wrongful acts liability. The excess automobile liability line of coverage 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 history, industry-wide increases in bus accidents, limited financial capacity among insurance carriers, and many carriers' decisions to withdraw from the California market because of the absence of tort liability caps and the social inflation of jury verdicts.

The finalized renewal proposals for the excess automobile and general liability insurance program have not yet been presented to the District. Alliant Insurance Services has provided a "not-to-exceed" renewal estimate of $13,036,915 or an approximate 4.42% increase over last year's premiums. For reference, the expiring 2022-23 premium was $12,484,800. The coverage specifications are provided in Attachment 1.

Recognizing the upward trend in excess liability premiums, Staff and Alliant Insurance Services provided a presentation on Alternative Risk Transfer (ART) programs that could potentially result in premium cost savings at the August 31, 2022, Board Retreat. After reviewing the ART proposal options for this renewal and comparing their pros and cons relative to maintaining the District's current transit operations insurance program structure, staff does not currently recommend changing programs. Specifically, the less than 5% increase is not as high as previous increases, and the risk exposure of an ART program would not be worth taking on at this time. Staff continues to work with Alliant to evaluate this option and will provide the Board with additional updates and information regarding this program for next year's insurance program.

Excess Workers' Compensation: During the 2022-23 renewal, the Board approved a two-year policy contract with the carrier, Safety National. The expiring 2022-23 premium was $438,108; the 2023-24 premium will not exceed $455,632 or an approximate 4% premium increase over last year. 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 expiring 2022-23 premium was $16,202; the 2023-24 proposed premium is $16,688 and represents a 3% 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 number 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 associated with data breaches, ransomware, and other cyber-attacks including, but not limited to, notification costs, credit monitoring, costs to defend claims by state regulators, fines and penalties, business interruption, and cyber extortion.

Globally, cyberattacks are on the rise, with attacks becoming more frequent and losses becoming more severe. Ransomware accounts for a higher proportion of losses, with the ransoms costing victims an average of $2.2 million in 2022, more than doubling in cost since 2020. The average cost of a data breach is expected to increase from $3.86 million in 2020 to $4.27 million by 2025. This increase is driven by the growing sophistication of cyberattacks and the increasing costs associated with data and operational recovery, business interruption, and legally mandated notification and credit monitoring costs.

Despite the worsening cyber-liability landscape, the 2023-24 proposed premium is $190,883, which represents a 5.2% *decrease* over the expiring premium of $201,338. This decrease is due to the efforts of the District's Cybersecurity staff and their work with the insurer on a risk reduction program. Staff is recommending that the Board authorize the binding of Resilience's coverage proposal. The coverage specifications are provided in Attachment 4.

Fiduciary Liability: This coverage protects board officials, trustees, and professional administrator(s) of the District's pension plan and the plan itself with respect to Errors and Omissions (E&O) in the administration of the employee benefits programs. The policy under consideration also provides for a waiver of recourse provision to protect the board members' personal assets. The expiring 2022-23 premium was $34,989; the 2023-24 proposed premium will not exceed $35,449 and represents an estimated 1.3% increase over the expiring premium. The coverage specifications are provided in Attachment 5.

ADVANTAGES/DISADVANTAGES:

Advantage(s): The program being recommended by Staff renews the 2023-2024 insurance coverage lines at levels that provide coverage consistent with prior policy terms and falls within 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 2023-2024 policy period.

Disadvantage(s): Renewing the District's insurance program will result in an increase in premiums, albeit at a much lower rate than prior years' premium increases.

ALTERNATIVES ANALYSIS:

The Board could choose to authorize the binding of the 2023-2024 Transit Operations Insurance Program under one or more of the Alternative Risk Transfer proposal options provided. Staff does not recommend doing so at this time as further analysis of how implementing the ART options would impact the District's retained risk and excess liability reserve funding is needed.

Nor would staff recommend the non-renewal of any of these policies as an alternative given the District's risk exposures.

PRIOR RELEVANT BOARD ACTION/POLICIES:

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

SR-21-235 - Consider Authorizing the Renewal of the 2021-2022 Transit Insurance Program

SR-20-183 - Consider Authorizing the Renewal of the 2020-2021 Transit Insurance Program

ATTACHMENTS:

1. 23-24 - XS Liability Renewal Proposal Not-to-Exceed Estimate
2. 23-24 - XS Workers' Compensation Renewal Proposal
3. 23-24 - Commercial Crime Insurance Renewal Proposal
4. 23-24 - Cyber-Liability Insurance Renewal Proposal
5. 23-24 - Fiduciary Liability Insurance Renewal Proposal
6. 23-24 - Excess Automobile and General Liability (will be provided as soon as available)

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Approved/Reviewed by:
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