




**September 8, 2021**

**To:** Finance and Administration Committee   
**From:** Darrell E. Johnson, Chief Executive Officer  
**Subject:** Excess Workers' Compensation Insurance Policy

### **Overview**

The Orange County Transportation Authority currently has an excess workers' compensation insurance policy with Arch Insurance Company. This policy will expire on October 1, 2021, and a renewal is necessary to maintain coverage.

### **Recommendation**

Authorize the Chief Executive Officer to negotiate and execute Purchase Order No. A48430, in the amount of \$500,000, to Marsh Risk and Insurance Services, Inc., to purchase excess workers' compensation insurance on behalf of the Orange County Transportation Authority for the policy period of October 1, 2021 to October 1, 2022.

### **Discussion**

Workers' compensation coverage is designed to provide medical, temporary disability, and permanent disability benefits to injured workers. Employer's liability is an additional coverage provided as part of the excess workers' compensation insurance policy. Employer's liability insurance covers claims presented to an employer on behalf of employees seeking damages caused by job-related activities that result in bodily injury or disease. For example, if a claim was filed against the Orange County Transportation Authority (OCTA) due to a serious and willful action resulting from an uncorrected yet known safety hazard that caused injury to an employee, OCTA may be liable for the costs of the claim as it would fall outside of the normal workers' compensation coverage. The employer's liability coverage would pay for the cost of legal defense for these types of claims. Fortunately, OCTA has not had any claims that would trigger the employer's liability coverage. However, retention of employer's liability insurance remains a prudent risk mitigation action.

OCTA's current excess workers' compensation insurance policy with Arch Insurance Company (Arch) has a self-insured retention of \$750,000 each accident, as well as coverage to statutory limits, with a rate of \$0.3933 per \$100 of payroll, for a premium of \$445,589.

OCTA's Broker of Record is Marsh Risk and Insurance Services, Inc. (Marsh). Marsh is paid a flat fee of \$110,000 for marketing and placing all property and casualty insurance per Agreement No. C-7-1585 approved by the Board of Directors (Board) on May 22, 2017. This flat fee paid to Marsh is not part of the premium OCTA anticipates paying to the selected insurers for the renewal of this policy. By agreement, Marsh does not earn any additional compensation or commission for its services. The contract further requires that any commissions offered by insurers will offset OCTA's premiums.

Although OCTA has incurred few claims due to the coronavirus (COVID-19) pandemic to date, workers' compensation insurers are experiencing higher incurred losses generally and higher exposure to loss since the State of California adopted SB 1159 (Chapter 85, Statutes of 2020), which created a disputable presumption that illness or death related to COVID-19 is an occupational injury. Marsh has informed OCTA that California workers' compensation premium rates have generally increased between five and 10 percent this year due to higher medical costs, increased claims activity, and ongoing COVID-19 claim payouts. Due to OCTA's favorable overall loss experience, Marsh has been instructed to seek competitive quotes from insurers offering workers' compensation insurance in California to renew this coverage. Therefore, staff is requesting Board approval to renew this policy for a negotiated amount, not to exceed \$500,000 annual premium.

#### **Fiscal Impact**

This project was approved in OCTA's Fiscal Year 2021-22 Budget, Human Resources and Organizational Development Division, Risk Management Department, Account No. 0041-7552-A2311-DSG, and is funded through the Workers' Compensation Internal Service Fund.

***Summary***

Based on the information provided, staff recommends authorizing the Chief Executive Officer to negotiate and execute Purchase Order No. A48430, in the amount of \$500,000, to Marsh Risk and Insurance Services, Inc., to purchase excess workers' compensation insurance on behalf of the Orange County Transportation Authority for the policy period of October 1, 2021 to October 1, 2022.

***Attachment***

None.

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