OCTA

November 13, 2024

To: Finance and Administration Committee

From: Darrell E. Johnson, Chief Executive Officer For

Subject: Excess Liability Insurance Renewal

Overview

The Orange County Transportation Authority procured excess liability insurance continuously from 1991 through 2020. Beginning in December 2020, the Orange County Transportation Authority became fully self-insured and has maintained that self-insurance since then.

Recommendations

A. Authorize the Chief Executive Officer to establish a $10 million self-insured retention for excess liability claims.

B. Authorize the Chief Executive Officer to negotiate and execute Purchase Order No. A59005, in the amount not to exceed $960,000, to Marsh Risk and Insurance Services, Inc., to purchase a $5 million excess liability insurance policy on behalf of the Orange County Transportation Authority for the policy period of November 1, 2024 to October 31, 2025.

Background

The Orange County Transportation Authority (OCTA) has been primarily self-insured for general liability claims since 1977 and had historically (1991 to 2020) purchased excess liability insurance above its self-insured retention (SIR) to provide financial protection against claim losses in excess of the SIR. Excess liability insurance protects against claim losses in excess of the primary layer of insurance coverage. In OCTA's case, the primary layer is OCTA's SIR, which has varied between $4 and $5 million between 2001 to 2020.

In November 2017, OCTA maintained a $4 million SIR and purchased $60 million in excess coverage with a premium cost of $706,000. In November 2018, OCTA maintained its $4 million SIR with $60 million in excess liability coverage with an increased premium cost of $763,000. Then, in

November 2019, excess liability market conditions had worsened, and the cost of excess insurance increased. As a result, OCTA's SIR increased to $5 million and excess coverage was reduced to $7 million at a premium cost of $799,000. In November 2020, OCTA received one quote for $5 million in excess coverage above a $7.5 million SIR for a premium cost of $719,000.

On November 23, 2020, when OCTA's excess liability policy came up for renewal, the Board of Directors (Board) declined to renew the policy due to the excess liability market conditions significantly increasing premium costs and directed staff to continue to monitor the market. OCTA has been fully self-insured for liability since that date, and staff has continued monitoring the excess liability insurance market for opportunities to purchase excess liability insurance. Due to continued unfavorable market conditions, the Board approved OCTA maintaining its self-insured status on November 21, 2021, and again on November 14, 2022.

Discussion

Staff has continued to monitor the excess liability market. In fall 2023, OCTA staff requested its broker, Marsh Risk and Insurance Services, Inc. (Marsh), to initiate conversations with the excess liability market to gauge interest in providing OCTA excess liability insurance. The initial market response was very limited. As a result, OCTA and Marsh developed a strategic promotional effort to explain OCTA's operational model, risk profile, and loss history to distinguish OCTA from other public entity liability risks, including transit agencies. This effort lasted throughout the spring and summer 2024 with OCTA receiving coverage and pricing proposals in September 2024.

While the excess liability market has not declined, it has stabilized, and OCTA faces greater operational risk with the post-pandemic combination of expanded services and increased ridership. To more effectively manage these risks, staff is recommending a two-layer approach to OCTA's liability insurance that includes both a self-insured retention component and a purchased insurance policy.

OCTA has an admirable safety record with only one loss in excess of $4.5 million in the past ten years. However, with significant post-pandemic increases to both services and ridership, OCTA's risk profile has increased and one loss with circumstances adverse to OCTA could easily deplete OCTA's liability reserves. Staff is recommending that OCTA establish a $10 million SIR. Retaining this level of SIR for day-to-day exposures with an excess insurance layer enables OCTA to reasonably protect itself from a catastrophic event while not putting its reserves at risk. Staff is also recommending OCTA purchase a $5 million excess liability insurance policy.

The excess liability market has stabilized over recent years and while premiums have not returned to pre-2019 levels, market conditions, in combination with OCTA's high SIR and favorable loss record, make this an opportune time for OCTA to re-enter the excess liability market.

Summary

Staff has reassessed the excess liability market conditions, OCTA's retention, reserves, and risk profile, and recommends OCTA establish a $10 million self-insured retention and purchase a $5 million excess liability insurance policy layer. The annual premium for this coverage is not to exceed $960,000.

Attachment

None.

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