**Business Item**

Item: 2011-304

# M Management Committee

**Meeting date: November 9, 2011**

| ADVISORY INFORMATION | |
|---|---|
| **Date:** | 11/1/11 |
| **Subject:** | Authorization to procure railroad liability insurance for Northstar Operations |
| **District(s), Member(s):** | All |
| **Policy/Legal Reference:** | |
| **Staff Prepared/Presented:** | Phil Walljasper, 651-602-1787 |
| **Division/Department:** | Regional Administration/Risk Management |

## Proposed Action

That the Metropolitan Council authorize the procurement of railroad liability insurance, effective 1/1/12-5/31/13, for the Northstar Commuter Rail Operations in an amount not to exceed $1,710,000.

## Background

In its Joint Use Agreement (JUA) with the BNSF Railway, the Metropolitan Council is required to procure and maintain a railroad liability insurance program to respond to claims related to Northstar commuter rail. This insurance is to have a limit of $200 million per occurrence and must provide coverage for both the Council and BNSF.

Insurance companies are limited in the amount of insurance they can offer, which is based on the size of the company, underwriting philosophy, reinsurance, and the type of risk. Because of this, when insurance of very high limits is required for a very specialized type of risk, such as railroad liability, it is normal in the industry to have more than one insurance company involved.

When multiple insurance companies are involved in an insurance program, the insurance is structured in such a way that each company provides a “layer” of insurance (e.g. company “A” will provide $10 million, company “B” will provide the next $10 million, etc.), with each company/layer charging a premium. This is often times referred to as a “tower” of insurance. The premium charged with the first layer of a tower, often referred to as the lead layer, has a direct impact on the pricing for the upper layers.

There is also a retention (similar to a deductible) that applies to this insurance and is on a per occurrence basis. With railroad liability insurance, underwriters are generally not willing to provide coverage from dollar one and will only quote excess of a retained loss. The retention for the Northstar insurance program is $2,000,000.

## Rationale

The Northstar program was presented to a total of 17 different insurance companies and was very well received. After the presentations, the first objective was to identify and negotiate the lead layer. The list of viable companies was narrowed to three: Lexington (which is the current lead carrier), XL US, and Gemini. During negotiations, the most advantageous option was to have more than one company in the lead layer (the structure of having more than one company in a layer is referred to as a “quota share”). In the recommended tower, XL US and Gemini each insure $12.5M of the $25M layer. Staff and the Council’s broker then identified and negotiated with insurance companies to cover the excess layers above XL and Gemini.

The type of losses covered by a tower of insurance is also dictated by the lead layer. With XL and Gemini leading, the coverage is consistent with the expiring insurance and is appropriate for the requirements of the Joint Use Agreement with BNSF.

The pricing for the recommended insurance program is below what was budgeted and is 5.4% lower than last year's premium (on an annualized basis), which is a significant reduction in light of the market trend over the last year. After negotiating the insurance on an annual basis, staff and the Council's broker approached the insurance companies to inquire about adjusting the expiration date from December 31st to May 31st, to which they agreed. While this did not result in any additional premium savings, it reduces the time constraints that exist during year-end, both from an underwriting standpoint with the insurance companies and the timing of Council meetings during the months of November and December. Renewing with a 17-month term has been approved by Transit Finance. It is anticipated that future renewals will be for 12-month terms.

## Funding

The premium with the recommended insurance is below what has been budgeted. Additionally, the self-insured retention is fully funded at $2,000,000.

## Known Support / Opposition

Not applicable