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## **BOARD OF DIRECTORS MEETING AGENDA**

**Friday, June 18, 2021  
1:00 p.m.**

**Zoom Videoconference  
Please contact Katie Sullivan for Videoconference Information**

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All portions of this meeting will be conducted by teleconferencing in accordance with the State of California Executive Order N-29-20.

Members of the public may observe and listen to the meeting telephonically. No physical location will be available from which members of the public may observe the meeting and offer public comment. Public comments may be submitted in advance of the meeting by emailing Katie Sullivan at [katie.sullivan@sedgwick.com](mailto:katie.sullivan@sedgwick.com) no later than 5 p.m. on Thursday, June 17, 2021. If a member of the public would like to address the Board of Directors during the meeting, the person may email Ms. Sullivan during the meeting and, if timely received, Ms. Sullivan will read or summarize the email to the Board members.

In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation to participate in this meeting, please contact Katie Sullivan at (916) 244-1164 or [katie.sullivan@sedgwick.com](mailto:katie.sullivan@sedgwick.com) (email). Requests must be made as early as possible, and at least one full business day before the start of the meeting.

Documents and materials relating to an open session agenda item that are provided to the Pooled Liability Assurance Network Joint Powers Authority (PLAN JPA) Board of Directors less than 72 hours prior to a regular meeting will be available for public inspection at 1750 Creekside Oaks Dr., Suite 200, Sacramento, CA 95833.

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|--------------------|---|
| <b><u>Page</u></b> | <b>1. CALL TO ORDER</b>                             |
|                    | <b>2. INTRODUCTIONS</b>                             |
|                    | <b>3. APPROVAL OF AGENDA AS POSTED (OR AMENDED)</b> |

**Page**     **4. PUBLIC COMMENTS** - The Public may submit any questions in advance of the meeting by contacting Katie Sullivan at: katie.sullivan@sedgwick.com. This time is reserved for members of the public to address the Board relative to matters of the Board of Directors not on the agenda. No action may be taken on non-agenda items unless authorized by law. Comments will be limited to five minutes per person and twenty minutes in total.

**5. CONSENT CALENDAR**

If a Committee member would like to discuss any item listed, it may be pulled from the Consent Calendar.

- 5**            \*A. Minutes from the December 9, 2020, Strategic Planning Session
  - 13**           \*B. Minutes from the December 10, 2020, Board of Directors Meeting
  - 24**           \*C. Minutes from the January 29, 2021, Special Board of Directors Meeting
  - 28**           \*D. Minutes from the March 26, 2021, Special Board of Directors Meeting
  - 36**           \*E. 2020/21 Risk Control Program Update
  - 47**           \*F. 2021/22 Risk Control Program
  - 50**           \*G. Update on the 2021 Sewer and Stormwater Summit
  - 54**           \*H. Resolution No. 2021-01: Board and Committee Meeting Schedule 2021/22
  - 56**           \*I. Claims Policies & Procedures Update
  - 64**           \*J. Investment Policy – Redlined
  - 73**           \*K. Investment Policy Memo from PFM Asset Management
  - 76**           \*L. Draft Resolution No. 2018-02: Amending the PLAN JPA Records Retention Policy
  - 81**           \*M. PLAN JPA Program Administration Contract with Sedgwick
- Recommendation: Staff recommends the Board of Directors approve the Consent Calendar.*

**6. ELECTIONS**

- 96**           \*A. Review of Candidates to Fill PLAN JPA Committees and Officer Positions
- Recommendation:*
- 1) *Staff recommends the Board of Directors select candidates to serve on PLAN JPA's Committees for Program Year 2021/22.*
  - 2) *Staff recommends the Board of Directors elect members to fill the Officer positions for PLAN JPA's Program Year 2021/22.*

**7. FINANCIAL MATTERS**

- 99**           \*A. Consideration of the Proposed 2021/22 Operating Budget
- Recommendation: Staff recommends the Board of Directors approve the 2021/22 Operating Budget.*

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**8. GOVERNING DOCUMENTS**

**\*A. Consideration of Governing Documents**

*Recommendation: Staff recommends the Board approve the proposed PLAN governing documents as presented, subject to final review and approval by PLAN Coverage Counsel and PLAN Board Counsel.*

**9. CLOSED SESSION**

A. Pursuant to Government Code Section 54956.95(a), the Committee will hold a closed session to discuss the following claims:

- Burlingame Tree Claims

B. Pursuant to Government Code Section 54957.1, the Committee will report in open session any reportable action taken in closed session.

**10. CLOSING COMMENTS**

This time is reserved for comments by Board members and/or staff and to identify matters for future Board business.

- A. Board of Directors
- B. Staff

**11. ADJOURNMENT**

\* Reference materials attached with staff report.

**June 18, 2021**

**Agenda Item 5.A.-5.M.**

**CONSENT CALENDAR**

**SUBJECT:   Consent Calendar**

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**BACKGROUND AND HISTORY:**

The Consent Calendar consists of items that require approval or acceptance but are self-explanatory and require no discussion. If a Board member would like to discuss any item listed, it may be pulled from the Consent Calendar.

**RECOMMENDATION:**

*Staff recommends the Board of Directors approve the Consent Calendar.*

**REFERENCE MATERIALS ATTACHED:**

- A. Minutes from the December 9, 2020, Strategic Planning Session
- B. Minutes from the December 10, 2020, Board of Directors Meeting
- C. Minutes from the January 29, 2021, Special Board of Directors Meeting
- D. Minutes from the March 26, 2021, Special Board of Directors Meeting
- E. 2020/21 Risk Control Program Update
- F. 2021/22 Risk Control Program
- G. Update on the 2021 Sewer and Stormwater Summit
- H. Resolution No. 2021-01: Board and Committee Meeting Schedule 2021/22
- I. Updated PLAN JPA Claims Handling Guidelines
- J. Investment Policy – Redlined
- K. Investment Policy Memo from PFM Asset Management
- L. Draft Resolution No. 2018-02: Amending the PLAN JPA Records Retention Policy
- M. PLAN JPA Program Administration Contract with Sedgwick

**POOLED LIABILITY ASSURANCE NETWORK JOINT  
POWERS AUTHORITY  
(PLAN JPA)**

**MINUTES OF THE STRATEGIC PLANNING SESSION  
OF DECEMBER 9, 2020**

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A Strategic Planning Session of the Board of Directors was held on December 9, 2020, via teleconference.

**MEMBERS PRESENT:** Marc Zafferano, President, San Bruno  
Pak Lin, Treasurer, Colma  
Maria Ojeda, American Canyon  
George Rodericks, Atherton  
Alan Shear, Benicia  
Will Fuentes, Campbell  
Julie Carter, Dublin  
Brenda Olwin, East Palo Alto  
Maria Saguisag-Sid, Foster City (Alternate)  
Lisa Lopez, Half Moon Bay  
Jan Cooke, Hillsborough  
Sarina Revillar, Los Altos Hills  
Robert Schultz, Los Gatos  
Mike Sung, Millbrae (Alternate)  
Donald Larkin, Morgan Hill  
Lenka Hovorka, Newark  
Kevin Woodhouse, Pacifica  
Jeremy Dennis, Portola Valley  
Joe Chinn, Ross  
Rebecca Mendenhall, San Carlos  
Mary Furey, Saratoga  
Leah Lockhart, South San Francisco  
Suzanne Creekmore, Tiburon (Alternate)  
Kevin Bryant, Woodside

**MEMBERS ABSENT:** Carol Augustine, Burlingame (Alternate)  
Kristina Alfaro, Cupertino (Alternate)

Walter Rossman, Milpitas  
Greg Folsom, Suisun City (Alternate)

**OTHERS PRESENT:**

Jon Paulsen, General Manager  
Katie Sullivan, Assistant General Manager  
Daria Hoffmann, Analyst  
Cynthia Gordon, Unit Manager  
Cheyenne Deary, Litigation Analyst  
Ritesh Sharma, Finance Manager  
Terrie Norris, Risk Control Manager  
William Portello, Litigation Manager  
Susan DeNardo, Litigation Manager  
Joe Costamagna, Contractual Risk Transfer Manager  
Greg Rubens, Board Counsel, Aaronson, Dickerson,  
Cohn & Lanzone  
Becky Richards, Bickmore Actuarial  
Lisa Hisatomi, Dublin  
Renuka Dhadwal, Dublin  
Rafael Alvarado, East Palo Alto  
Shadia Hrichi, Morgan Hill (Alternate)  
Katie Uthman, Woodside

**1. SESSION ONE**

PLAN JPA President Marc Zafferano welcomed everyone to Session One of the Strategic Planning Session at 9:32 a.m.

**A. Claims Trends**

PLAN JPA's Litigation Managers William Portello and Susan DeNardo, in conjunction with TPA Claim Supervisor Cynthia Gordon, provided an overview of claims trends and developments, as well as information on claims issues and handling.

Ms. Gordon presented the Claims Process for first-party and third-party claims. To submit a first-party claim, fill out a form located on the PLAN JPA website or by contacting Ms. Gordon. To transmit a third-party claim, the city must email [US-York-ABAGClaims@sedgwick.com](mailto:US-York-ABAGClaims@sedgwick.com). Once the claim has been received, the claim is passed to an adjuster. The adjuster will look at if the claim was submitted in a timely manner then

determine if there is liability potential. From this point, the adjuster will assist in managing litigation. Ms. Gordon informed the Board she is available for meetings and questions.

Jon Paulsen, General Manager, reminded the Board to be aware of who claims reports are being distributed to as many contain confidential information. Furthermore, staff is working to improve the claims process to ensure timely settlements.

Mr. Portello presented a review of litigation and claims from 2011-2020. Because of COVID-19 restrictions causing courtrooms to close, minimal action has been taken on many claims. Mr. Portello informed the Board of PLAN JPA's average claim cycle time. Sedgwick has worked to improve cycle times and is proud of current resolution times.

### **B. Experience Modification**

Ritesh Sharma, Finance Manager, discussed member contributions and experience modification. Mr. Sharma gave an overview of primary pool layer coverage costs, excess and reinsurance costs, and administration costs.

Becky Richards, Bickmore Actuarial, reviewed the goals of the cost allocation plan. Members driving claims costs should be contributing more. The Board was reminded of the current ex-mod methodology (which has been in place at least since 2002/03) is:

- Loss experience and payroll from 5 years: for example, when calculating contributions for 2018/19 year, losses and payroll from 2012/13 through 2016/17 were used in the calculation.
- Losses are limited to \$250,000 per occurrence.
- Creditability is given to payroll, limited to a minimum of 20% and maximum of 90%
- The current contribution method caps any members total annual contribution at +/- 30% change.

Ms. Richards recommended no change to loss experience years, no change to loss caps, and no change to credibility. However, it was recommended the capping be moved from the total contributions to the ex-mod. This tempers the impact for any member to receive one large claim and allows for exposure changes. Members could see premiums increase or decrease more than 30%.

Discussion ensued regarding in depth explanations on ex-mods. Temporary mechanisms could be put in place while members adjust to new changes.

Mr. Paulsen and Ms. Richards presented member experience mods by program year for the last 10 years. Severity in claims, loss rates, and frequency were analyzed from each member anonymously. The Board requested this information be included with the yearly actuarial report.

## **2. SESSION TWO**

### **MEMBERS PRESENT:**

Marc Zafferano, President, San Bruno  
Pak Lin, Treasurer, Colma  
Maria Ojeda, American Canyon  
George Rodericks, Atherton  
Alan Shear, Benicia  
Will Fuentes, Campbell  
Julie Carter, Dublin  
Maria Saguisag-Sid, Foster City (Alternate)  
Jan Cooke, Hillsborough  
Robert Schultz, Los Gatos  
Donald Larkin, Morgan Hill  
Lenka Hovorka, Newark  
Kevin Woodhouse, Pacifica  
Jeremy Dennis, Portola Valley  
Joe Chinn, Ross  
Leah Lockhart, South San Francisco  
Suzanne Creekmore, Tiburon (Alternate)  
Kevin Bryant, Woodside

### **MEMBERS ABSENT:**

Carol Augustine, Burlingame (Alternate)  
Kristina Alfaro, Cupertino (Alternate)  
Brenda Olwin, East Palo Alto  
Lisa Lopez, Half Moon Bay  
Sarina Revillar, Los Altos Hills  
Thomas Williams, Millbrae



Walter Rossman, Milpitas  
Rebecca Mendenhall, San Carlos  
Mary Furey, Saratoga  
Greg Folsom, Suisun City (Alternate)

**OTHERS PRESENT:**

Jon Paulsen, General Manager  
Katie Sullivan, Assistant General Manager  
Daria Hoffmann, Analyst  
Cynthia Gordon, Unit Manager  
Cheyenne Deary, Litigation Analyst  
Ritesh Sharma, Finance Manager  
Terrie Norris, Risk Control Manager  
William Portello, Litigation Manager  
Susan DeNardo, Litigation Manager  
Joe Costamagna, Contractual Risk Transfer Manager  
Greg Rubens, Board Counsel, Aaronson, Dickerson,  
Cohn & Lanzone  
Nathan Oyster, Burke, Williams, & Sorensen, LLP  
Ian White, Police Captain, Campbell  
Renuka Dhadwal, Dublin  
Rafael Alvarado, East Palo Alto  
Albert Pardini, Police Chief, East Palo Alto  
Cory Call, Police Captain, Foster City  
Martin Ticas, Police Captain, Foster City  
Ann Ritzma, Hillsborough (Alternate)  
Ashley Perez, Lead Management Analyst, Hillsborough  
Mandy Brown, Hillsborough  
Armando Corpus, Chief of Police, Milpitas  
Mario Ramirez, Police Captain, Morgan Hill  
Gina Anderson, Police Chief, Newark  
Daniel Steidle, Police Chief, Pacifica  
Erik Masterson, Police Chief, Ross  
Katie Uthman, Woodside

PLAN JPA President Marc Zafferano welcomed everyone to Session Two of the Strategic Planning Session at 1:00 p.m.

### **A. Law Enforcement Liability**

Mr. Paulsen provided a brief overview of PLAN JPA's formation and goals. The purpose of the introductory session on law enforcement liability was to offer assistance, resources, training, and development strategies.

Ms. DeNardo introduced Nathan Oyster, Burke, Williams, & Sorensen, LLP, as the guest speaker. Mr. Oyster's experience in civil rights and officer involved shooting cases provides unique insight for litigation trends.

Mr. Oyster presented law enforcement litigation trends. The changing opinion on law enforcement issues impacts the jury pool in civil rights cases. It was reported that the average number of fatal police shootings is consistent year to year. California tends to have a higher rate of Officer Involved Shootings by 25% yearly.

The main public issues are whether the number of officer involved shootings are indicative of excessive force and/or indicative of a racial bias or systemic racism. However, the answer is dependent upon the jury.

Reviewing public survey results, 72% of Americans favor banning choke holds and 86% of Americans favor outfitting all officers with body camera meaning the public is expecting these policy changes to take place.

Jury pools in California have moved further to the left in the last 15 years. Jury verdict rewards for fatal officer involved shootings have risen to an average of \$4.5 million.

Terrie Norris, Risk Control Manager, presented facts found from PLAN JPA's Law Enforcement Survey. 93% of PLAN JPA's members with in house police use body cameras. Ms. Norris informed the Board of the importance of ensuring body cameras are in use and that policies referring to body camera be up to date. Ms. Norris also recommended member's use of force policies be kept up to date.

## **3. SESSION THREE**

**MEMBERS PRESENT:** Marc Zafferano, President, San Bruno  
Pak Lin, Treasurer, Colma  
George Rodericks, Atherton  
Alan Shear, Benicia  
Will Fuentes, Campbell

Julie Carter, Dublin  
Maria Saguisag-Sid, Foster City (Alternate)  
Sarina Revillar, Los Altos Hills  
Mike Sung, Millbrae (Alternate)  
Donald Larkin, Morgan Hill  
Joe Chinn, Ross  
Rebecca Mendenhall, San Carlos  
Leah Lockhart, South San Francisco  
Kevin Bryant, Woodside

**MEMBERS ABSENT:**

Maria Ojeda, American Canyon  
Carol Augustine, Burlingame (Alternate)  
Kristina Alfaro, Cupertino (Alternate)  
Brenda Olwin, East Palo Alto  
Lisa Lopez, Half Moon Bay  
Jan Cooke, Hillsborough  
Robert Schultz, Los Gatos  
Walter Rossman, Milpitas  
Lenka Hovorka, Newark  
Kevin Woodhouse, Pacifica  
Jeremy Dennis, Portola Valley  
Mary Furey, Saratoga  
Greg Folsom, Suisun City (Alternate)  
Greg Chanis, Tiburon

**OTHERS PRESENT:**

Jon Paulsen, General Manager  
Katie Sullivan, Assistant General Manager  
Daria Hoffmann, Analyst  
Cynthia Gordon, Unit Manager  
Cheyenne Deary, Litigation Analyst  
Ritesh Sharma, Finance Manager  
Terrie Norris, Risk Control Manager  
William Portello, Litigation Manager  
Susan DeNardo, Litigation Manager  
Joe Costamagna, Contractual Risk Transfer Manager  
Jacquelyn Miller, Workers' Compensation Program Manager  
Salina Flores, Campbell

Renuka Dhadwal, Dublin  
Cindy Safe, Woodside (Alternate)

PLAN JPA President Marc Zafferano welcomed everyone to Session Three of the Strategic Planning Session at 3:05 p.m.

**A. Open Discussion**

Mr. Paulsen led the Board through an open discussion for PLAN JPA members to speak directly with staff to ask questions and provide feedback.

Discussions ensued regarding COVID-19 procedures and related claims rates. If employees' contract COVID-19 while at work, workers compensation will take effect. While claims rates have not been increasing heavily, members should have guidelines ready at hand. Business interruption losses will be difficult to cover and should be filed sooner rather than later if the disease exclusion can be avoided.

Discussion moved to tree risks and claims. Identification and restoration of unstable trees is crucial to maintaining low tree claims costs.

Law enforcement liability claims have appeared more frequently due to vandalization and arrests from the recent marches and protests.

Mr. Zafferano led a discussion regarding the towing of cars from owners with an expired license. Members were encouraged to analyze their policies and to ensure they are efficient for their cities.

**4. ADJOURNMENT**

The Strategic Planning Session of the PLAN JPA Board of Directors was adjourned at 4:13 p.m.

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Katie Sullivan, Assistant Board Secretary

**POOLED LIABILITY ASSURANCE NETWORK JOINT  
POWERS AUTHORITY  
(PLAN JPA)**

**MINUTES OF THE BOARD OF DIRECTORS  
MEETING OF DECEMBER 10, 2020**

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A regular meeting of the Board of Directors was held on December 10, 2020, via Zoom Videoconference.

**MEMBERS PRESENT:**

Marc Zafferano, President, San Bruno  
Pak Lin, Treasurer, Colma *(Left after Item 9.A)*  
Maria Ojeda, American Canyon  
George Rodericks, Atherton *(Left after Item 7.A)*  
Alan Shear, Benicia *(Left after Item 9.A)*  
Will Fuentes, Campbell *(Left after Item 9.A)*  
Vanessa Guerra, Cupertino *(Left after Item 6.B)*  
Julie Carter, Dublin  
Brenda Olwin, East Palo Alto  
Maria Saguisag-Sid, Foster City  
Lisa Lopez, Half Moon Bay *(Arrived during Item 5; Left after Item 9.A)*  
Jan Cooke, Hillsborough  
Sarina Revillar, Los Altos Hills  
Robert Schultz, Los Gatos *(Arrived during Item 6.A)*  
Mike Sung, Millbrae  
Donald Larkin, Morgan Hill  
Lenka Hovorka, Newark  
Kevin Woodhouse, Pacifica *(Left after Item 9.A)*  
Jeremy Dennis, Portola Valley *(Left after Item 9.A)*  
Joe Chinn, Ross  
Rebecca Mendenhall, San Carlos  
Mary Furey, Saratoga  
Leah Lockhart, South San Francisco *(Arrived during Item 4; Left during Item 7.A)*  
Suzanne Creekmore, Alternate, Tiburon  
Kevin Bryant, Woodside

**MEMBERS ABSENT:**

Carol Augustine, Burlingame  
Walter Rossman, Milpitas  
Scott Corey, Suisun City

**OTHERS PRESENT:**

Jon Paulsen, General Manager  
Katie Sullivan, Assistant General Manager  
Ritesh Sharma, Finance Manager  
Terrie Norris, Risk Control Manager  
Will Portello, Litigation Manager  
Susan DeNardo, Litigation Manager  
Joe Costamagna, Contractual Risk Transfer Manager  
Cheyenne Harold, Litigation Management Analyst  
Cynthia Gordon, Sedgwick Claims Administration  
Dorienne Zumwalt, Sedgwick Claims Administration *(Left after Item 8.A)*  
Becky Richard, Bickmore Actuarial *(Left after Item 6.B)*  
Jesse Deol, James Marta & Company *(Left after Item 8.A)*  
Greg Rubens, Board Counsel  
Seth Cole, Alliant Insurance Services  
Colette Klier, Sedgwick  
Jeff Johnston, Sedgwick *(Arrived during Item 6.B)*  
Renuka Dhadwal, Dublin *(Left after Item 7.A)*  
Lisa Hisatomi, Dublin  
Ann Ritzma, Hillsborough  
Mandy Brown, Hillsborough *(Arrived during Item 6.A)*  
Cody Einfalt, Los Altos Hills *(Left before Item 8.A)*  
Cindy Safe, Woodside  
Katie Uthman, Woodside *(Left before Item 8.A)*

**1. CALL TO ORDER**

The December 10, 2020, Board of Directors meeting was called to order at 9:33 a.m. by President Marc Zafferano.

**2. INTRODUCTIONS**

Those present introduced themselves.

**3. APPROVAL OF AGENDA AS POSTED (OR AMENDED)**

*The agenda was approved as posted.*

#### **4. PUBLIC COMMENTS**

None.

#### **5. CONSENT CALENDAR**

*Kevin Bryant moved to approve the following items: A) Minutes from the April 14, 2020, Special Board of Directors meeting; B) Minutes from the June 11, 2020, Board of Directors Meeting; C) Minutes from the June 25, 2020, Special Board of Directors Meeting; D) Warrant List from October 1, 2020 – October 31, 2020; E) Treasurer's Report as of September 30, 2020; F) Investment Performance Report as of June 30, 2020, from PFM Asset Management; G) Consideration of Fixed Pricing Agreement for Sidewalk Repair; H) 2020/21 Risk Control Update; I) Contractual Risk Transfer Update; and J) State of the Insurance Market. Pak Lin seconded the motion. The motion passed by majority vote by George Rodericks, Alan Shear, Will Fuentes, Pak Lin, Julie Carter, Vanessa Guerra, Julie Carter, Brenda Olwin, Maria Saguisag-Sid, Lisa Lopez, Jan Cooke, Sarina Revillar, Mike Sung, Donald Larkin, Lenka Hovorka, Kevin Woodhouse, Jeremy Dennis, Joe Chinn, Marc Zafferano, Rebecca Mendenhall, Mary Furey, Leah Lockhart, Suzanne Creekmore, and Kevin Bryant. Maria Ojeda was not present for voting.*

#### **6. FINANCIAL AUDIT**

##### **A. Audit Approval Presentation**

The financial audit for the year ending June 30, 2020, was prepared by James Marta & Company. Jesse Deol, James Marta & Company, was present to discuss the following sections:

- Section One: contained the independent auditor's report which states the auditor's opinion. The opinion is "unqualified," which means the financial statements were presented fairly.
- Section Two: contained the Management Discussion and Analysis (MD&A) which describes what transpired throughout the program year.
- Section Three: contained the Basic Financial Statements comprised of the Statement of Net Position, Statement of Activities, Statement of Cash Flows and Notes to the Financial Statements.
- Section Four: contained supplementary information such as the ten-year claims development information.

- Section Five: contained additional information such as financial statements from program perspective and Graphical Summary of Claims.

Mr. Deol also reviewed the Governance Letter and Internal Control Letter with the Board.

*Pak Lin moved to accept and file the Financial Audit Report for the Fiscal Year Ended June 30, 2020. Joe Chinn seconded the motion. A roll call vote was taken and the motion passed unanimously by Maria Ojeda, George Rodericks, Alan Shear, Will Fuentes, Pak Lin, Julie Carter, Vanessa Guerra, Julie Carter, Brenda Olwin, Maria Saguisag-Sid, Lisa Lopez, Jan Cooke, Sarina Revillar, Robert Schultz, Mike Sung, Donald Larkin, Lenka Hovorka, Kevin Woodhouse, Jeremy Dennis, Joe Chinn, Marc Zafferano, Rebecca Mendenhall, Mary Furey, Leah Lockhart, Suzanne Creekmore, and Kevin Bryant.*

#### **B. Consideration of New Experience Modification Methodology**

At the February 21, 2020, Strategic Planning Session, member contributions were discussed including experience modification (Ex-Mod) methodology, reinsurance/excess, and administrative allocations. The Board directed staff to review the contribution methodology and provide recommendation for changes.

During the December 9, 2020, Strategic Planning Session, Ritesh Sharma, PLAN JPA Finance Manager, discussed the current ex-mod methodology, reminding the Board it has been in place since the 2002/03 program year. He reviewed the following:

- Loss experience and payroll from five years: when calculating contributions for the 2018/19 program year, losses and payroll from 2012/13 through 2016/17 were used in the calculation.
- Losses are limited to \$250,000 per occurrence.
- Creditability is given to payroll, limited to a minimum for 20% and maximum of 90%.

Mr. Sharma noted the excess costs are allocated based on the population of each member, administration costs are allocated 20%/80% to Property and General Liability. Those costs are further allocated by 33% fixed (equally among the members) and 67% variable (combination of reported claims and paid losses). He informed the current method also caps any members total annual contributions at +/- 30% change.



Becky Richard, Bickmore Actuarial, reviewed the proposed methodology of changing the cap from +/- 30% to contributions to +/- 30% to ex-mod and what it could look like for the members going forward.

Concerns were raised around projections for individual agencies who are also trying to develop their budgets for the next fiscal year. Ms. Richard indicated staff could use loss data as of September 30, 2020, combined with excess projections from Alliant, and bring rough numbers forward to the members. It was also noted a possible three-year transition could be beneficial for the members if the projections are higher than desired for members.

Mr. Paulsen informed this change would also require updates to governing documents that would be brought to the Board in June for formal approval. The Board agreed they would like to see what the contribution projections would look like and agreed to hold a special meeting in February/March 2021 to make a final decision regarding implementing a tempering over an extended period of time.

*Kevin Bryant moved to direct staff to make the methodology change and to bring forward preliminary projections at a special meeting in February/March of 2021. Kevin Woodhouse seconded the motion. A roll call vote was taken and the motion passed by majority vote by Maria Ojeda, George Rodericks, Alan Shear, Will Fuentes, Pak Lin, Julie Carter, Julie Carter, Brenda Olwin, Maria Saguisag-Sid, Lisa Lopez, Jan Cooke, Sarina Revillar, Robert Schultz, Mike Sung, Donald Larkin, Lenka Hovorka, Kevin Woodhouse, Jeremy Dennis, Joe Chinn, Marc Zafferano, Rebecca Mendenhall, Mary Furey, Leah Lockhart, Suzanne Creekmore, and Kevin Bryant. Vanessa Guerra was not present for voting.*

## **7. ADMINISTRATIVE MATTERS**

### **A. Review of PLAN JPA Member Satisfaction Survey**

Sedgwick staff and service providers contracted by PLAN JPA continuously strive to provide state-of-the-art, professional service, and greatly value the opinions of all member agencies. Annually, evaluation surveys will be sent to the member agencies to collect feedback regarding member satisfaction levels with services being provided to the JPA.

Katie Sullivan, Assistant General Manager, was present to discuss the results of the survey with the Board. She noted there was higher participation among the membership,

as well as an overall rise in results for program administration, claims administration, risk control, and brokerage services.

Ms. Sullivan addressed concerns around the new certificate issuance process informing staff and Seth Cole, Alliant, had spoken and ensured issues would be addressed and slight changes would be made to the issuance process. She reminded the Board PLAN JPA made this change at July 1, 2020, and kinks are still being worked out; however, the overall process has been well-received by members.

#### **B. Discussion Regarding Program Administration Contract Renewal with Sedgwick**

PLAN JPA contracted with Sedgwick for program administration services beginning November 2, 2017. The initial term of the contract was through June 30, 2020, with up to three one-year extensions. During the December 2019 Board of Directors meeting, the Board elected to sign a one-year contract extension for the 2020/21.

Jon Paulsen, General Manager, informed as part of the discussion around a new long-term contract, staff has requested an increase of \$75,000 to annual compensation beginning with the contract option starting on July 1, 2021. The increase is specifically to support the level of Litigation Management services currently being provided. Sedgwick's Litigation Management team for PLAN JPA consists of two licensed attorneys, William Portello and Susan DeNardo, who are also Certified Litigation Management Professionals, as well as litigation analyst level support. The team's responsibilities include:

- Reviewing and making recommendations on responses to Government Claims received by members, in order to preserve potential defenses;
- Reviewing incoming claims and lawsuits for significance to determine an appropriate course of action for early intervention in conjunction with the member and the third-party administrator (TPA);
- Providing input on defense counsel assignments;
- Engaging with counsel on discovery plans;
- Providing an independent review of potential liability and resolution strategy;
- Supporting 9-12 Claims Committee meetings per year, including full case write-ups, settlement authority requests, and most recently a Litigation Manager's Report (LMR) on all pending cases potentially impacting pool's funds;
- Participating in approximately 75% of mediations or settlement conferences involving pooled funds; and more.

Mr. Paulsen indicated over the past three years the complexity of the highest value claims has significantly increased as has the frequency of those large claims (dubbed frequency of severity by the industry). In addition, staff has been engaged in complex litigation with more successful outcomes that are also intensive. In terms of metrics, litigated claim counts can vary widely year to year; a high of 59 new litigated claims in 2015/16 and down to 16 in 2018/19. Since the transition to Sedgwick, staff has overseen the resolution of 138 litigated files.

Since there was a financial interest in the outcome of this contract, staff recused themselves from further discussion. The following staff members left the meeting to allow the Board to discuss freely:

- Jon Paulsen, General Manager
- Katie Sullivan, Assistant General Manager
- Ritesh Sharma, Finance Manager
- Will Portello, Litigation Manager
- Susan DeNardo, Litigation Manager
- Terrie Norris, Risk Control Manager
- Joe Costamagna, Contractual Risk Transfer Manager
- Cheyenne Harold, Litigation Management Analyst
- Cynthia Gordon, Sedgwick Claims Administration
- Dorienne Zumwalt, Sedgwick Claims Administration

Discussion and consideration on this matter was forwarded into Agenda Item 7.C.

#### **C. Discussion Regarding Claims Administration Contract Renewal with Sedgwick**

PLAN JPA contracted with Sedgwick for claims administration services through July 31, 2020, with up to two one-year extensions. During the December 2019 Board of Directors meeting, the Board elected to sign a one-year contract.

Since there was a financial interest in the outcome of this contract, staff recused themselves from discussion. The following staff members left the meeting to allow the Board to discuss freely:

- Jon Paulsen, General Manager
- Katie Sullivan, Assistant General Manager
- Ritesh Sharma, Finance Manager
- Will Portello, Litigation Manager
- Susan DeNardo, Litigation Manager
- Terrie Norris, Risk Control Manager

- Joe Costamagna, Contractual Risk Transfer Manager
- Cheyenne Harold, Litigation Management Analyst
- Cynthia Gordon, Sedgwick Claims Administration
- Dorienne Zumwalt, Sedgwick Claims Administration

***Donald Larkin moved to approve a three-year contract for Program Administration Services and a three-year contract for Claims Administration Services, both with up to three one-year extensions. Rebecca Mendenhall seconded the motion. A roll call vote was taken and the motion passed unanimously by Maria Ojeda, Alan Shear, Will Fuentes, Pak Lin, Julie Carter, Julie Carter, Brenda Olwin, Maria Saguisag-Sid, Lisa Lopez, Jan Cooke, Sarina Revillar, Robert Schultz, Mike Sung, Donald Larkin, Lenka Hovorka, Kevin Woodhouse, Jeremy Dennis, Joe Chinn, Marc Zafferano, Rebecca Mendenhall, Mary Furey, Suzanne Creekmore, and Kevin Bryant.***

#### **D. Consideration of Appointments of PLAN JPA**

Mr. Paulsen informed the Board Kathleen Kane, City of Burlingame, has left her position with her agency; therefore, creating a vacancy in the position of Vice President. He advised that Rebecca Mendenhall, City of San Carlos, had expressed interest in serving as Vice President.

***Donald Larkin moved to elect Rebecca Mendenhall to serve as PLAN JPA Vice President. Brenda Olwin seconded the motion. A roll call vote was taken and the motion passed by majority vote by Maria Ojeda, Alan Shear, Will Fuentes, Pak Lin, Julie Carter, Julie Carter, Brenda Olwin, Maria Saguisag-Sid, Lisa Lopez, Jan Cooke, Sarina Revillar, Robert Schultz, Donald Larkin, Lenka Hovorka, Kevin Woodhouse, Jeremy Dennis, Joe Chinn, Marc Zafferano, Rebecca Mendenhall, Mary Furey, Suzanne Creekmore, and Kevin Bryant. Mike Sung was not present for voting.***

With Ms. Mendenhall's election to Vice President, this created a vacancy on the Executive Committee as Ms. Mendenhall held one of the At-Large positions. A short discussion ensued and Maria Saguisag-Sid, City of Foster City, volunteered to fill the vacancy on the Executive Committee.

Additionally, John Mullins, Town of Hillsborough, retired from his agency and left a vacancy on the Claims Committee. Ann Ritzma, Town of Hillsborough expressed interest in serving in his place. The Claims Committee elected Ms. Ritzma to fill the vacancy left by Mr. Mullins, pending ratification of the Board of Directors.

*Kevin Bryant moved to elect Maria Saguisag-Sid to the Executive Committee and Ann Ritzma to the Claims Committee. Rebecca Mendenhall seconded the motion. A roll call vote was taken and the motion passed unanimously by Maria Ojeda, Alan Shear, Will Fuentes, Pak Lin, Julie Carter, Julie Carter, Brenda Olwin, Maria Saguisag-Sid, Lisa Lopez, Jan Cooke, Sarina Revillar, Robert Schultz, Mike Sung, Donald Larkin, Lenka Hovorka, Kevin Woodhouse, Jeremy Dennis, Joe Chinn, Marc Zafferano, Rebecca Mendenhall, Mary Furey, Suzanne Creekmore, and Kevin Bryant.*

## **8. CLOSED SESSION**

A. The Board convened to closed session, pursuant to Government Code section 54956.95(a) at 12:00 p.m. to discuss the following claims:

- Unknown Claims v. City of Burlingame

B. Pursuant to Government Code Section 54957.1, the Committee reconvened to open session at 12:12 p.m. The following actions were taken under closed session:

*No reportable action was taken during closed session.*

## **9. GENERAL MANAGER'S REPORT**

### **A. Report from PLAN JPA's General Manager**

Mr. Paulsen provided the Board with an update on the following:

#### City of Gilroy Equity Update

Effective July 1, 2015, the City of Gilroy (City) elected to withdraw from ABAG PLAN. The terms of the withdrawal agreement provide for an equity distribution or assessment based on the claims development in years in which the City was a participant.

Effective January 1, 2020, California passed AB218 essentially removing the statute of limitations on sexual abuse and molestation claims. Staff is expecting significant claims activity for municipalities that have historically run parks and recreation activities, aquatic centers, and other youth "interactive" programs. PLAN JPA has been notified of two AB218 claims to date.

On June 11, 2020, the Board directed Mr. Paulsen and Greg Rubens, Board Counsel, to negotiate a partial release of the final equity distribution to the City. Negotiations resulted

in an agreement to release the entire scheduled amount with half held contractually in reserve for potential settlement of any AB218 claims filed against the City through December 31, 2022.

#### Staffing Update

Daria Hoffman, Analyst, joined Sedgwick on July 6, 2020. She has been supporting Mr. Paulsen and Ms. Sullivan on PLAN JPA.

Mr. Paulsen was promoted to Vice President of Pooling at Sedgwick on September 1, 2020. He will be retaining all current responsibilities for PLAN JPA's servicing with no anticipated changes going forward.

Will Portello, Litigation Manager, has been serving as Litigation Manager for PLAN JPA since April 25, 2019. Staff requested PLAN JPA Executive Committee formalize Mr. Portello's appointment in writing retrospectively to that date. Staff also requested confirmation that Mr. Portello can extend his settlement authority to Susan DeNardo, Litigation Manager, on an as needed basis. Both requests were approved at the October 29, 2020, Executive Committee meeting.

#### Wildfire Exposure Review

Over the past several months, staff engaged with EFI Global, Inc. (a division of Sedgwick) to review wildfire exposure to member properties. The first stage of this review included a geo-mapping of member property locations overlaid with the most recently published CalFire Fire Hazard Severity Zone maps. The results of the first stage are very positive.

Four members have the greatest percent of their properties in LRA – Very High Hazard Severity Zone and SRA – Very High Fire Hazard Severity Zone. Staff recommended contacting these four members to discuss their existing fire prevention and protection practices via virtual interviews.

#### Cyber Liability Resources

An initiative from PLAN JPA's December 2019 Strategic Planning Session, staff developed a four-part series of cyber risk webinars which were presented to members from August 19, 2020, to September 23, 2020. Attendance and feedback were positive.

The next step for many municipalities is to pursue cyber risk assessment services. The market for these services in California is limited and expensive where available. In

response, Sedgwick has added a dedicated California IT Risk Control Manager, Colette Klier, to our team.

Ms. Klier briefly discussed the benefits and services with the Board before instructing to reach out to staff for more information.

## **10. STRATEGIC PLANNING REPORT OUT**

### **A. Report from the Law Enforcement Liability Breakout Session**

This Agenda Item was not discussed due to time constraints. Mr. Paulsen advised staff would distribute a recap of the discussion to the Board in the following weeks.

### **B. Report from the Open Discussion Breakout Session**

This Agenda Item was not discussed due to time constraints. Mr. Paulsen advised staff would distribute a recap of the discussion to the Board in the following weeks.

## **11. CLOSING COMMENTS**

### **A. Board of Directors**

None.

### **B. Staff**

None.

## **12. ADJOURNMENT**

The Regular Meeting of the PLAN JPA Board of Directors was adjourned at 12:46 p.m.



Katie Sullivan, Assistant Board Secretary

**POOLED LIABILITY ASSURANCE NETWORK JOINT  
POWERS AUTHORITY  
(PLAN JPA)**

**MINUTES OF THE BOARD OF DIRECTORS  
SPECIAL MEETING OF JANUARY 29, 2021**

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A special meeting of the Board of Directors was held on January 29, 2021, via Zoom Videoconference.

**MEMBERS PRESENT:** Marc Zafferano, President, San Bruno  
Pak Lin, Treasurer, Colma  
George Rodericks, Atherton  
Alan Shear, Benicia  
Scott Spansail, Burlingame  
Will Fuentes, Campbell  
Julie Carter, Dublin  
Maria Saguisag-Sid, Foster City  
Lisa Lopez, Half Moon Bay  
Jan Cooke, Hillsborough  
Sarina Revillar, Los Altos Hills  
Robert Schultz, Los Gatos  
Mike Sung, Millbrae  
Jane Corpus, Alternate, Milpitas  
Donald Larkin, Morgan Hill  
David Benoun, Alternate, Newark  
Kevin Woodhouse, Pacifica  
Jeremy Dennis, Portola Valley  
Mary Furey, Saratoga  
Rebecca Mendenhall, San Carlos  
Leah Lockhart, South San Francisco  
Greg Folsom, Suisun City  
Kevin Bryant, Woodside

**MEMBERS ABSENT:** Maria Ojeda, American Canyon  
Kristina Alfaro, Cupertino  
Brenda Olwin, East Palo Alto  
Joe Chinn, Ross  
Greg Chanis, Tiburon



**OTHERS PRESENT:**

Jon Paulsen, General Manager  
Katie Sullivan, Assistant General Manager  
Daria Hoffmann, Analyst  
Ritesh Sharma, Finance Manager  
Terrie Norris, Risk Control Manager  
Will Portello, Litigation Manager  
Susan DeNardo, Litigation Manager  
Becky Richard, Bickmore Actuarial *[Left during Agenda Item 5.A.]*  
Greg Rubens, Board Counsel  
Seth Cole, Alliant Insurance Services  
Carol Augustine, Burlingame  
Lisa Hisatomi, Dublin  
Ann Ritzma, Hillsborough  
Cindy Safe, Woodside

**1. CALL TO ORDER**

The January 29, 2021, Special Board of Directors meeting was called to order at 11:01 a.m. by President Marc Zafferano.

**2. INTRODUCTIONS**

Roll call introductions were made it was determined that a quorum was present.

**3. APPROVAL OF AGENDA AS POSTED (OR AMENDED)**

*The agenda was approved as posted.*

**4. PUBLIC COMMENTS**

None.

**5. ADMINISTRATIVE MATTERS**

**A. Consideration of Excess Liability Options**

Jon Paulsen, General Manager, informed the Board of a potential challenge regarding PLAN JPA's liability limits.

Seth Cole, Alliant Insurance Services, directed the Board to the Reinsurance Excess Liability Placement Chart, attached to the agenda, to provide a visual of how excess liability is held for PLAN JPA. Mr. Cole reviewed each insured layer of insurance followed by an example of how a claim is covered through each layer.

Will Portello, Litigation Manager, briefly reviewed PLAN JPA's current claim status with the Board, noting a new claim puts PLAN JPA at risk for utilizing its \$5 million aggregate in the \$5 million excess of \$25 million layer.

Mr. Cole presented the Board with alternatives to keep PLAN JPA insured up to \$30 million.

- The Board could elect to obtain an option from Munich Re;
- Leave the situation as is; or
- PLAN JPA could self-insure the layer.

Becky Richard, Bickmore Actuarial, informed the Board of various scenarios, leading to \$315,000 for claims costs to cover PLAN JPA for the remainder of the program year in the \$5 million excess of \$25 million layer.

Discussion ensued regarding PLAN JPA's budget and how contributions would change based on each option. The Board considered whether purchasing excess insurance is needed if the coverage is not retroactive. The Board and staff concluded purchasing excess insurance without it being retroactive is not a viable option.

*Kevin Bryant moved to give staff authority to bind coverage from September 2020 for a premium cost not to exceed \$450,000. Pak Lin seconded the motion. A roll call vote was taken and the motion passed unanimously by George Rodericks, Alan Shear, Scott Spansail, Will Fuentes, Pak Lin, Julie Carter, Maria Saguisag-Sid, Lisa Lopez, Jan Cooke, Sarina Revillar, Robert Schultz, Mike Sung, Jane Corpus, Donald Larkin, David Benoun, Kevin Woodhouse, Jeremy Dennis, Marc Zafferano, Rebecca Mendenhall, Mary Furey, Leah Lockhart, Greg Folsom, and Kevin Bryant.*

## **6. CLOSING COMMENTS**

### **A. Board of Directors**

None.

### **B. Staff**

None.

**7. ADJOURNMENT**

The Special Meeting of the PLAN JPA Board of Directors was adjourned at 11:47 a.m.

A handwritten signature in black ink, reading "Katie Sullivan". The signature is written in a cursive style with a large, looping "S" for the last name.

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Katie Sullivan, Assistant Board Secretary

**POOLED LIABILITY ASSURANCE NETWORK JOINT  
POWERS AUTHORITY  
(PLAN JPA)**

**MINUTES OF THE BOARD OF DIRECTORS  
SPECIAL MEETING OF MARCH 26, 2021**

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A special meeting of the Board of Directors was held on March 26, 2021, via Zoom Videoconference.

**MEMBERS PRESENT:**

Marc Zafferano, President, San Bruno  
Pak Lin, Treasurer, Colma  
Maria Ojeda, American Canyon [*Arrived during Agenda Item 5.A.*]  
George Rodericks, Atherton  
Scott Spansail, Burlingame  
Julie Carter, Dublin  
Brenda Olwin, East Palo Alto  
Maria Saguisag-Sid, Foster City  
Lisa Lopez, Half Moon Bay  
Jan Cooke, Hillsborough  
Sarina Revillar, Los Altos Hills  
Mike Sung, Millbrae  
Lauren Lai, Milpitas  
Donald Larkin, Morgan Hill  
Lenka Hovorka, Newark  
Kevin Woodhouse, Pacifica  
Jeremy Dennis, Portola Valley  
Joe Chinn, Ross  
Rebecca Mendenhall, San Carlos  
Mary Furey, Saratoga  
Kevin Bryant, Woodside

**MEMBERS ABSENT:**

Mike Dotson, Benicia  
Will Fuentes, Campbell  
Kristina Alfaro, Cupertino  
Robert Schultz, Los Gatos  
Leah Lockhart, South San Francisco  
Greg Folsom, Suisun City

Greg Chanis, Tiburon

**OTHERS PRESENT:**

Jon Paulsen, General Manager  
Katie Sullivan, Assistant General Manager  
Daria Hoffmann, Analyst  
Ritesh Sharma, Finance Manager  
Terrie Norris, Risk Control Manager  
Susan DeNardo, Litigation Manager  
Cheyenne Deary,  
Rob Kramer, CARMA Executive Director  
Becky Richard, Bickmore Actuarial  
Greg Rubens, Board Counsel  
Seth Cole, Alliant Insurance Services  
Scott Corey, Alternate, American Canyon  
Lisa Hisatomi, Dublin

**1. CALL TO ORDER**

The March 26, 2021, Special Board of Directors meeting was called to order at 1:03 p.m. by President Marc Zafferano.

**2. INTRODUCTIONS**

Jon Paulsen, General Manager, welcomed Lauren Lai, Milpitas Finance Director, to PLAN JPA.

**3. APPROVAL OF AGENDA AS POSTED (OR AMENDED)**

*The agenda was approved as posted.*

**4. PUBLIC COMMENTS**

None.

**5. LIABILITY PROGRAM**

**A. Consideration of Excess Liability Options**

Mr. Paulsen reminded the Board of action taken at the January 29, 2021, meeting to authorize staff and Alliant to attempt to negotiate retroactive (to July 1, 2020) coverage

for the \$5 million excess of \$25 million layer from Munich Re or Public Risk Innovation, Solutions and Management JPA (PRISM). Pricing was established as not to exceed \$450,000. Munich Re has since provided an option under the pricing threshold, but retroactive to January 19, 2021. At the January 29, 2021 Board meeting, the Board discussed potential options that are not retroactive to July 1, 2020, and declined them as not viable.

PRISM has extended an option to PLAN JPA to provide retroactive (to July 1, 2020) excess liability coverage of \$5 million excess of \$25 million at \$425,000. The \$5 million coverage is both per occurrence and in the aggregate. In order to exercise this option, PLAN JPA would need to join PRISM JPA.

Previously the PLAN Board reviewed joining other JPAs for consideration of any unintended liabilities or obligations to PLAN JPA. Specifically, that California Public Employee's Retirement System (CALPERS) obligations for other JPA employees may extend to PLAN in an adverse circumstance. PRISM currently employs approximately 90 full-time staff and has over 1,000 total public entity members. Additionally, PLAN JPA would be subject to the deficit and surplus provisions of the PRISM General Liability I (GLI) program and thereby the overall loss performance of that specific group of public agencies.

Discussion ensued on whether to not replenish the layer or to move forward with the option presented by PRISM.

***Donald Larkin moved to join PRISM for the \$5 million excess of \$25 million layer. Kevin Bryant seconded the motion. A roll call vote was taken and the motion passed unanimously by Maria Ojeda, George Rodericks, Alan Shear, Scott Spansail, Pak Lin, Julie Carter, Brenda Olwin, Maria Saguisag-Sid, Lisa Lopez, Jan Cooke, Sarina Revillar, Mike Sung, Lauren Lai, Donald Larkin, Lenka Horvorka, Kevin Woodhouse, Jeremy Dennis, Joe Chinn, Marc Zafferano, Rebecca Mendenhall, Mary Furey, and Kevin Bryant.***

## **B. Actuarial Update for the General Liability Program**

Ritesh Sharma, Finance Manager, reviewed PLAN JPA's general liability program layers. Becky Richard, Bickmore Actuarial, reviewed PLAN JPA's Pool Layer and evaluated claims and losses for the Board, indicating ultimate losses have decreased by \$150,000.

In the past year, PLAN JPA has funded slightly above 60% confidence level. The decrease (4.2%) in primary funding layer is due to favorable development of claims in

past year. In addition, estimated payroll decreased by .09% from the prior year due to the change in payroll reporting method. The 2021/22 estimated payroll is based upon the actual payroll collected on a quarterly basis, annualized with a conservative 3% trend increase. In prior years, the estimated payroll was collected annually.

#### **C. State of the Market - Liability**

Seth Cole, Alliant Insurance Services (Alliant), reviewed the state of the insurance market in regard to liability. Nuclear jury verdicts and high settlements continue to present challenges. Alliant continues to monitor the market.

#### **D. PLAN JPA 2021/22 Projections - Liability**

Mr. Sharma reviewed the primary pool layer funding for the 20-21 program year including a \$2.5M confidence level and \$2.5M reinsurance layer. The 20-21 cost was \$10,984,960. For the 21-22 program year, staff estimates a 19% increase for PLAN's pooled layer, reinsurance, and excess coverage. Administration costs were not included in the discussion.

Discussion ensued regarding difficulties faced by the broader insurance market. Further discussion ensued on the costs of PLAN JPA claims through the years.

#### **E. Presentation of CARMA Excess Coverage**

Rob Kramer, California Affiliated Risk Management Authorities (CARMA) Executive Director, provided the Board of Directors with a presentation on CARMA excess coverage.

CARMA was formed 28 years ago and is currently accredited with excellence. Mr. Kramer hopes CARMA and PLAN JPA can share resources.

CARMA is composed of other Joint Power Authorities of a similar nature to PLAN JPA. Bay Cities Joint Powers Insurance Authority, Municipal Pooling Authority, Monterey Bay Area Self Insurance Authority, Central San Joaquin Valley Risk Management Authority, and Vector Control Joint Powers Agency are all current members of CARMA. CARMA is in the process of reviewing applications for membership from Yolo County Public Agency Risk Management Insurance Authority (YCPARMIA) and California Intergovernmental Risk Sharing Authority (CIRA). Should PLAN JPA participate in CARMA, representation on the Board would be in the form of a Board Member and Alternate.

After joining CARMA, PLAN JPA's retention layer would move from \$2.5M to \$1M. CARMA rates are expected to be reduced upon PLAN JPA joining.

Discussion ensued regarding next steps for the process. Mr. Sharma shared the CARMA option at the first \$5M layer. PLAN JPA's participation in CARMA would be both an insurance purchase and a shared pool layer.

#### **F. Consideration of Member Allocations**

Mr. Sharma reviewed calculations discussed at the December 9, 2020, Strategic Planning Session including:

The current ex-mod methodology (which has been in place at least since 2002/03) is:

- Loss experience and payroll from 5 years: for example, when calculating contributions for 2018/19 year, losses and payroll from 2012/13 through 2016/17 were used in the calculation.
- Losses are limited to \$250,000 per occurrence.
- Creditability is given to payroll, limited to a minimum of 20% and maximum of 90%.

The current method also caps any members total annual contribution at +/- 30% change.

At the December 10, 2020, Board Meeting, staff recommended the following changes to the contribution calculation:

- Capping change of ex-mod at 30% from year to year.
- Removing the 30% cap from member contributions.

Ms. Richard reviewed the historical member allocations. The 21-22 contributions were analyzed by removing the total premium cap to limit a single large loss to a single member.

Ms. Richard then presented the total payroll over the last five years for each member.

Mr. Sharma reviewed the payroll collection process. Three set of data were requested from members, 18-19 actual payroll, a budgeted 19-20 payroll, and estimated 20-21 payroll. The estimates for the 20-21 year were not consistent due to methodologies of reporting. In order to standardize the data, staff will be requesting DE-9 data from the last 5 years from all members.

Discussion ensued regarding the importance of payroll in ex-mod calculations.



The Board directed staff to move forward with the historical payroll collection process. Discussion ensued on the timeline and deadlines for the collection.

Ms. Richard presented the projected deposits which is estimated to be about \$15.3M. The new payroll collection could result in changes to the total.

Staff recommended a phase in period of a 40% cap on contributions in the first year, a 50% cap in the second year, and a 60% cap in the third year. Staff estimates by the second or third year, all members would be paying their equitable share of contributions.

Extensive discussion ensued on member allocation capping.

## **6. PROPERTY PROGRAM**

### **A. Actuarial Update for the Property Program**

Mr. Sharma reviewed PLAN JPA's Property program structure. Alliant Property Insurance Program (APIP) currently provides coverage of \$225k per claim up to \$1B with an aggregate deductible of \$1M.

The proposed changes to the APIP program for the 21-22 program year are:

- Member SIR remains the same at \$5,000
- The PLAN JPA layer increases from \$225,000 to \$500,000
- APIP will cover from \$500,000 to \$1B with no aggregate deductible

Ms. Richard analyzed the actuarial data using the December data. Losses increased about 18% from 20-21 to 21-22 at the 70% confidence level. The total property premium is about \$4.4M.

Allocation for the property program is based on total insured value (TIV). Members' TIV remained stable over the past year.

Overall, member SIRs are expected to increase for the property program. At the 70% confidence level, an additional \$160,000 of member contributions is to be expected.

### **B. State of the Market - Property**

Mr. Cole informed the Board of challenges in the property program market. 2020 was the fifth worst year on record for insured losses globally. The first quarter of 2021 broke records for the worst catastrophic quarter due to winter storms. Because PLAN JPA's property insurance is part of the global market, it is impacted by all catastrophes in the market.

PLAN JPA specifically does not have a frequency issue but does have a number of large claims. PLAN JPA is in the market and has submitted coverage requests to over 50 carriers worldwide. Most responses have been unfavorable; however, Lloyds of London has communicated possibly building a program for PLAN JPA. The wildfire deductible would range from \$1M to \$2M. Alliant continues to market PLAN JPA.

Mr. Paulsen reminded the Board that the increases and challenges are not unique to PLAN JPA. Difficulties are found across the market.

Mr. Cole discussed cyber liability coverage. The market is reacting to large payouts due to ransomware and hacking by raising rates. Significant increases are expected. PLAN JPA members will need to complete a cyber application to continue to obtain coverage. Mr. Paulsen stressed the importance of the completion of the applications in order to find placement.

#### **C. PLAN JPA 2021/22 Projections - Property**

Mr. Sharma reviewed the property program costs from 20-21 and the estimated costs for 21-22. Excess property and flood costs are estimated to rise about 40% to \$3.1M. Cyber coverage is expected to rise anywhere from 50% to 200%.

### **7. FINANCIAL MATTERS**

#### **A. Review of the PLAN JPA 2021/22 Draft Operating Budget**

Mr. Sharma reviewed the 21-22 draft operating budget. The agenda was structured to follow the budget. Mr. Sharma reviewed the liability program which is expected to see a 17% increase. The property program is expected to see a 34% increase. Contributions will see around a 23% increase. Funding at the 60% confidence level is about \$6.2M.

In addition to the contracted 3% increase to administration costs, the Board approved an additional \$75k for litigation management services. The actuarial cost is expected to rise 14%. Bank fees and investments will decrease by \$25k in the program administration costs due to the category being moved to investment costs.

### **8. CLOSING COMMENTS**

#### **A. Board of Directors**

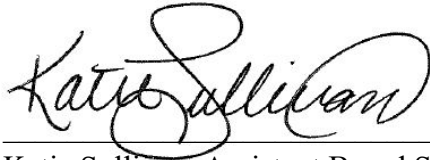
None.

#### **B. Staff**

None.

**9. ADJOURNMENT**

The Special Meeting of the PLAN JPA Board of Directors was adjourned at 3:44 p.m.

A handwritten signature in black ink, reading "Katie Sullivan". The signature is written in a cursive, flowing style. The first name "Katie" is written in a larger, more prominent script, and "Sullivan" follows in a similar but slightly smaller script. The signature is positioned above a horizontal line.

Katie Sullivan, Assistant Board Secretary

Member	Activity	Project Status
American Canyon	Ergonomic Assessments	Completed
	Ergonomic Assessments	Completed
	Ergonomic Assessments	Completed
	Ergonomic Assessments	Completed
	Ergonomic Assessments	Completed
	Safety Committee Consultation	Completed
	Ergonomic Assessments	Completed
	Tax Service During COVID Consultation	Completed
	Archery Range Consultation	Completed
Atherton, Town of	Special Events and Use of Facilities Assessment	In Progress
	COVID-19 Prevention Plan development and training Consultation	Completed
	Urban Forest Management Consultation	Completed
Benicia, City of	Special Events & Use of Facilities Assessment	In Progress
	Ergonomic Assessments	Completed
	Ergonomic Assessments	Completed
	Ergonomic Assessments	Completed
	Ergonomic Assessments	In Progress
Campbell, City of	Playground Assessment	In Progress
Colma, Town of	Special Events & Use of Facilities Assessment	Completed
Cupertino, City of	Infectious Disease Training	Completed
	Annual Training Schedule Development	Awaiting Client Response
	COVID-19 Prevention Plan Development	Completed
	Risk Management Committee Consultation – Multiple Meetings	Completed
	Anti-Theft SOP Development	Completed
	Accident Reporting and Investigation Training	Completed

Member	Activity	Project Status
Dublin, City of	5-Year Liability Loss Analysis	Completed
	Ergonomic Assessment	Completed
	IIPP and COVID-19 Supplement Training	Completed
East Palo Alto	Infectious Disease Consultation	Completed
Foster City, City of	Alcohol and Controlled Substance Policy Development	Closed
Half Moon Bay, City of	Special Events & use of Facilities Assessment	Completed
	Safety Committee Consultation	Completed
	5-Year Liability Loss Analysis	Completed
	Ergonomics Assessment	Completed
Los Altos Hills, Town of	Bloodborne Pathogens Exposure Control Program Revision	Completed
	IIPP Review and Revision	Completed
	Excavation and Trenching Training	Completed
	Heavy Equipment Training	Completed
	Ladder Safety Training	Scheduled
	Defensive Driver and IIPP Training	Canceled due to COVID
	Confined Space Awareness Training	Completed
	Fall Protection Training	Completed
	Compressed Gas Training	Completed
	IIPP Refresher Training	Completed
	Welding and Cutting Training	Completed
	Respiratory Protection Training	Completed
	Hazard Communication and LOTO Training	Completed
	Tool Safety Training	Completed
	Ergonomics Training	Completed
	Lockout/Tagout Training	Scheduled

Member	Activity	Project Status
Los Altos Hills, Town of	Workplace Violence Training	Scheduled for 2021
	Forklift Training	Scheduled for 2021
	Hearing Conservation Training	Completed
	Bloodborne Pathogens Exposure Control Training	Completed
	Heat Illness Prevention Training	Scheduled For May 2021
	Outdoor Hazards Training	Scheduled for May 2021
	Traffic Control & Flagger Training	In Progress
	Defensive Driving & IIPP Refresher Training	In Progress
	ER Equipment and PPE Refresher Training	Completed
	Annual 2021/2022 Training Schedule Consultation	Completed
Los Gatos, Town of	Special Events & Use of Facilities Assessment	Completed
	Safety Committee Consultation	Completed
	Safety Committee Consultation	Completed
	Safety Committee Consultation	Completed
	Safety Committee Consultation	Completed
	Forklift Training	Postponed due to COVID 19
	Heat Illness Prevention Training	Completed
	Infectious Disease Outbreak Response Plan Development	Closed
	Safety Inspection Program Development	Closed
	Playground Inspections Program Development	Closed
	Safety Training Consultation	Completed
Milpitas, City of	PLAN JPA Risk Control Orientation	Completed
	Special Events & Use of Facilities Assessment	In Progress
	Environmental Consultation	Completed
	Tree-Related Liability Trend Analysis	Completed

Member	Activity	Project Status
Milpitas, City of	2016-2020 5-Yr Liability, Auto and Property Loss Analysis	Completed
Morgan Hill, City of	Bloodborne Pathogens Program Development	Closed
	Confined Space Program Development	Closed
	Hazard Communication Program Development	Closed
	Heat Illness Program Development	Closed
	Lockout/Tagout Program Development	Closed
	Vehicle Use Program Development	Closed
	Personal Protection Equipment Program Development	Closed
	Respiratory Protection Program Development	Closed
	Trenching and Excavation Program Development	Closed
	Safety Training Consultation	Completed
	Confined Space Training	Closed – At Member Request
	Defensive Driving Training	Completed
	Industrial Ergonomics	Completed
	Fall Protection Training	Completed
	Forklift Training	Scheduled
	Heat Illness Prevention & BBPP Training	Scheduled
	Hearing Conservation Training	Completed
	IIPP Training	Awaiting Member Response
	Respiratory Protection Training	Completed
	Tool Safety Training	Completed
	Traffic Control & Flagger Training	Completed
	2021/2022 Training Scheduled Development	Completed
	Trenching & Excavation Training	Scheduled

Member	Activity	Project Status
	Workplace Violence Training	Scheduled
	Emergency Action Preparedness Training	Scheduled for 2021/2022
	PPE Training	Scheduled for 2021/2022
	Fall Protection Training	Scheduled for 2021/2022
	Haz Com and LOTO Training	Completed
	Hearing Conservation Training	Scheduled for 2021/2022
	IIPP Refresher Training	Scheduled for 2021/2022
	Industrial and Office Ergonomic Training	Scheduled for 2021/2022
	Respiratory Protection Training	Scheduled for 2021/2022
	Tool Safety Training	Scheduled for 2021/2022
	Traffic Control & Flagger Training	Scheduled for 2021/2022
	Workplace Violence Training	Scheduled for 2021/2022
Newark, City of	Ergonomic Consultation	Awaiting Member
	Under-desk exercise bike and treadmill safety Consultation	Completed
	IIPP Review and Revision	Completed
Pacifica, City of	Ergonomics Assessment	Completed
	Driver and Vehicle Use Policy Development	Completed
PLAN JPA	Set Up Ergonomic Request Program	Completed
	Defensive Driving Regional Training	Completed
	Defensive Driving Regional Training	Scheduled
	Dangerous Conditions Regional Training – 3 Part Webinar Series	Completed
	Cyber Risk Management Regional Training – 3 Part Webinar Series	Completed
	Sidewalk Hazard Control Regional Training – Webinar	Completed
	Self-Assessments and Best Practices Development	In Progress



Member	Activity	Project Status
PLAN JPA	Risk Management Goal Setting Focused Assessment	In Progress
	Defensive Driving Regional Training – Three Sessions	Scheduled for 6/9/2021
	Heat Illness Prevention Regional Training – Four Sessions	Scheduled for 6/8/2021
	Summer Safety Regional Training – Three Sessions	Scheduled for 6/9/2021
Ross, Town of	Special Events & Use of Facilities Assessment	Completed
	COVID-19 Prevention Plan (CPP) Development	Completed
	CPP Summary for Employee Training – Development	Completed
	COVID Exposure – Return to Work Consultation	Completed
	Risk Management Goals and Actions Plans for 2021/2022 Consultation	Completed
San Bruno, City of	Safety Committee Consultation	Completed
San Carlos, City of	Hazard Communication Program Development	Completed
	Hearing Conservation and LOTO Training	Completed
	5-Year Liability Loss Analysis	Completed
	Risk Management Committee Presentation	Completed
	Ergonomics – Training	Scheduled
Saratoga, City of	Alcohol Permits for Special Event Consultation	Completed
	Safety Committee Attendance Consultation	Completed
	Safety Committee Attendance Consultation	Completed
Suisun City, City of	Playground Equipment Assessment	Completed
	Employee Safety Training and PLAN JPA Risk Control Consultation	Completed
Tiburon, Town of	Safety Training Consultation	Completed
Woodside, Town of	COVID-19 Prevention Plan and Defensive Driving Training	Completed

**SUBJECT: 2020/2021 Risk Control Service Update Report**

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**BACKGROUND AND HISTORY:**

The Board of Directors reviewed and approved the proposed 2020/2021 Risk Control Service Plan at their June 2020 Board meeting. Staff developed the 2020/2021 Risk Control Service Plan based on the PLAN JPA Strategic Planning Session discussions and staff interactions with PLAN JPA. The 2020/2021 service plan mimics the 2019/2020 service plan to assist PLAN JPA members acclimate to being PLAN JPA and the new way risk control services are delivered under the contract between PLAN JPA and Sedgwick.

Staff has moved forward with the risk control service plan with some modifications to ensure compliance with evolving COVID-19 conditions to ensure the safety and health of PLAN JPA member organizations and the Sedgwick risk control staff.

Staff met with the PLAN JPA Risk Management Committee (RMC) in February to discuss progress on the 2020/2021 risk control service plan, and to discuss issues that had arisen during the 2020 PLAN JPA Strategic Planning and Board meetings in December of 2020. This report contains some of the highlights of the risk control services provided and the RMC discussions that influenced the proposed 2021/2022 Risk Control Service Plan which will be discussed later in this agenda.

**Risk Control Services on Request**

Risk control services continue to be provided on request utilizing virtual platforms. Staff has provided training, ergonomic evaluations and program development using WebEx, Zoom and GoTo virtual platforms. On-site services have and can be provided when COVID-19 PPE and social distancing requirements can be maintained. A list of the services that have been provided, and those scheduled through to June 2021, is included in the reference materials supporting this report. Several members have consulted with Terrie Norris to develop an annual training schedule. Staff developed and shared with members a list of training services, based on the Cal/OSHA required training list, that indicates which topics are available virtually, and which must be completed in person. A sample is included in the reference materials section of this report.

**Defensive Driving**

Defensive driving is available regionally and to individual members utilizing virtual platforms. Unfortunately, until social distance requirements have been removed ride-a-long defensive training is not available.

**Ergo Day in the Bay**

Staff reviewed its proposal for the “Ergo Day in the Bay” services which was originally designed to provide one day per month dedicated just to PLAN member ergonomic evaluations. The review lead Staff to develop an on-line request system that provides members with a more timely and flexible response to their ergonomic evaluation request. Members can initiate the service

request using the on-line request form, accessible within the Members Only section of the PLAN JPA website (<https://www.planjpa.org/member-forms/> in the Resources section). Once the member submits the form it is sent to the Risk Control personnel who specialize in ergonomic evaluations. A member of the ergo team contacts the member to schedule the service.

### **Regional Training**

The risk control service plan calls for the provision of 4 regional training sessions. The PLAN JPA members have responded very favorably to the provision of regional training in an on-line format as it eliminates travel time for the members' employees. Because of the members' desire for virtual regional training and COVID-19 restricts, all the 2020/2021 regional training programs were offered virtually. Completed regional trainings include: Defensive Driving; a three-part series on Dangerous Conditions; a three part series on Cyber Risk Management; and in coordination with Joe Costamagna, a special Cyber Risk Management follow up regarding Contractual Risk Transfer as it pertains to cyber risk management; and most recently, Sidewalk Safety. Staff has also worked with DFK and other sponsoring organizations to deliver the 2020 Sewer and Stormwater Summit virtually. Ten regional training sessions were offered in June on the topics of Heat Illness Prevention, Defensive Driving, and Summer Hazards. In total, Staff has delivered 20 regional trainings to date in the 2020/2021 service year.

### **Sedgwick Risk Control Website Resources**

The risk control staff continues to add resources the Sedgwick Risk Control Resources website. Recently added materials include:

- COVID-19 Resource page; can be accessed without logging into the secured area of the Sedgwick Risk Control Resources website.
- Webinars:
  - Active Shooter
  - COVID-19 Prevention Plan, How To Guide
  - COVID-19: Back to Business
  - COVID-19: "What Every Employee Needs to Know" updated to include all the training required by the COVID-19 Prevention Plan Emergency Standard
  - Cyber Risk (Part I): What is Happening in CA?
  - Cyber Risk Management (Part II): Best Practices
  - Cyber Risk Management (Part III): Resources
  - Dangerous Conditions (Part I): What Does Dangerous Conditions Mean?
  - Dangerous Conditions (Part II): Trivial vs. Substantial Risks
  - Dangerous Conditions (Part III): How Do Entities Protect Against Harm?
  - Heat Illness Prevention
  - Trenching and Excavation
  - Workplace Violence
- Programs:
  - Cal/OSHA COVID-19 IIPP Supplement
  - Continuity of Operations Plans (COOP) – Condensed & Expanded versions
  - Heat Illness Prevention Program for Transit Personnel
  - Infectious Disease Outbreak Response Plan
  - Transit Drug & Alcohol Policy
- Publications:

- COVID-19 Back to Business
- COVID-19 – Controlling COVID-19 in Schools
- COVID-19 – Field Work Precautions
- COVID-19 IIPP Requirements
- COVID-19 Safety in the Workplace
- Ergonomics for Working at Home/Ergo Set Yourself Up
- Heat Illness Prevention Resources
- Valley Fever Training Requirements
- Wildfire Smoke – Emergency Regulation Update & Firemap
- Sedgwick Produced Videos:
  - Adjusting Your Keyboard
  - Adjusting Your Office Chair
  - Home Workstation Setup

## **Unlimited Telephone and Email Consultation**

### **COVID-19 and Regulatory Updates**

SB 685: Staff provided members with information and resources when Governor Newsom approved AB 685, which amended the Labor Code and became effective January 1, 2021. It declared COVID-19 an imminent hazard to employees and authorized Cal/OSHA to take action to protect exposed employees up to and including, the shutting down of workplace operations. Additionally, it requires employers to:

- Report work-related COVID-19 illnesses to Cal/OSHA when the illness resulted in hospitalization or death.
- Provide written notification of potential exposure within one day to:
  - potentially exposed employees
  - potentially exposed employees and employers of contracted employees, and
  - the exclusive representative of potentially exposed employees
- Report outbreaks within the workplace to the local health department

AB 685 also provided definitions for:

- Infectious period
- Qualifying individual
- Worksite

COVID-19 Prevention Plan Emergency Temporary Standard: On November 20, 2020, the Cal/OSHA Standards Board passed the COVID-19 Prevention Plan (CPP) Emergency Temporary Standard which went into effect on November 30, 2020. The emergency standard will be in effect for at least six months and is schedule to be in effect until January 1, 2023. It was built on the previously issued COVID-19 IIPP Supplement requirement established in June 2020. The CPP Emergency Temporary Standard applies to all employers and places of employment except for places of employment with one employee who has no contact with other persons; employees working from home; and employees covered by Section 5199 (Aerosol Transmissible Disease). It provided definitions for:

- COVID-19: cases, exposures, hazards, tests

- Exposed workplace
- High-risk exposure period

It also requires:

- Identification, evaluation, and correction of COVID-19 exposure hazards.
  - Notification to potentially exposed employees.
  - Investigation of exposures.
- The exclusion of COVID-19 cases and potentially exposed employees from the workplace.
- The continuation of salary and benefits for potentially exposed employees during their exclusion from the workplace; the exclusion period was originally 14 days, but on December 14, 2020 the Governor issued an executive order that reduced it to 10 days.
- Specific COVID-19 exposure controls.
- Return to work criteria.
- Employee training.
- Reporting, recordkeeping, and access.
- Outbreak actions that include additional COVID-19 testing and corrective measures.
- Major outbreak action the increase COVID-19 testing and corrective measures.
- New section to address COVID-19 Prevention in Employer-Provided Housing; and
- New section to address COVID-19 Prevention in Employer-Provided Transportation To and From Work.

On December 1, 2020, Cal/OSHA published a model COVID-19 Prevention Program (CPP). On December 7, 2020, Sedgwick Risk Control provided a more user-friendly CPP template based on the Cal/OSHA CPP along with AB 685 notification letter templates. On December 22, 2020, Sedgwick Risk Control provided a revised CPP templated and revised AB 685 Notification templates that reflected the reduction of days potentially exposed employees must be excluded from the workplace. The revised CPP template also contained definitions from the emergency standard and forms developed by Risk Control to aid in the in-house contact tracing required during potential exposure investigations. On Monday, February 1, 2020, Risk Control sent out:

- a Semi-Customized CPP template, along
- a Flowchart to share with employees to help them know what to do if experiencing COVID-19 symptoms, test positive for COVID-19, or come in contact with someone who has tested positive for COVID-19.
- An Employer's FAQ to guide employers regarding what to do when employees report symptoms and/or positive tests
- Information on the location of webinars for:
  - COVID-19 Prevention Plan Development, How to
  - COVID-19 – What Every Employee Needs to Know (updated to include the training specified in the CPP.

## **RECOMMENDATION:**

*Receive and file.*

**REFERENCE MATERIALS ATTACHED:**

- Member 2020/2021 Risk Control Service Summary

## **RISK CONTROL MATTERS**

**SUBJECT: 2021/2022 Risk Control Program**

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### **BACKGROUND AND HISTORY:**

The comments and guidance provided by the Risk Management Committee at its October 2020 and February 2022 meetings, the December 2020 PLAN Strategic Planning Session, the Executive Committee May 2022, and staff interactions with PLAN JPA members influenced the proposed risk control service plan for 2021/2022. PLAN JPA members continue to use the core services of our prior risk control service plans, and we recommend keeping those services while adding new services to address evolving risk issues.

The proposed risk control service plan for 2021/22 includes:

- Focused Member Services
- Development of Focused Self-Assessments Materials
- Risk Control Service Days on Request
- Driver Training
- Driver Ride-a-long Evaluations
- Resource Development – Urban Forest Risk Management, Law Enforcement Risk Management, Wildfire Loss Prevention
- Regional Training
- Oversight of the Risk Management Fund Reimbursements
- Unlimited Phone and Email Consultation
- Sedgwick Risk Control Website Resources

### **Focused Member Services**

This program will provide one-to-one risk control services initiated by risk control staff to members with an ExMod greater than 120% (based on the *Proposed 2021/2022 Operating Budget*). The services will be kicked off with a “getting to know you” meeting with each member to explore what risk control issues they are most interested in addressing and/or what is keeping them up at night regarding risk management. The goal will be to help them reduce their loss experience and therefore their ExMod. During the initial meeting and subsequent meetings, a risk control service plan will be developed to support that member’s risk control goals and will include follow-up meetings to monitor progress and/or course correction.

### **Development of Focused Self-Assessments Materials**

Risk Control staff will continue to build a library of materials related liability risk management self-assessments. The documents developed will include focused self-assessment forms for each of the risk management topics; risk management best practices related to each topic; and a selection of exemplary documents associated with the risk management assessment topics. The library of materials will be posted on the Sedgwick Risk Control Resources webpage as each is development.

### **Risk Control Services on Request**

Members may continue to request risk control services to assist them with their liability and employee safety risk management programs. Services are wide-ranging and may include: assisting with best practice recommendations identified in the member's self-risk assessments; conducting customized risk management assessments; on-site and virtual training sessions; participating/facilitating in risk management committee meetings; developing written programs; conducting hazard inspections; conducting playground inspections; and conducting ergonomic evaluations. Members are encouraged to contact risk control to explore their risk control needs versus trying to find the service on a list, as our risk control team's expertise is expansive. There is no additional charge for these services as they are included in the service plan.

### **Driver Training**

Provide on-site Defensive Driving training on request and facilitate regional defensive driving training.

### **Driver Ride-a-long Evaluations**

Provide on-site employee ride-a-long evaluations on request.

### **Resource Development**

The focus for the 2021/2022 resource development services will be: Urban Forest Risk Management; Law Enforcement Risk Management; and Wildfire Loss Prevention. Resources found and/or developed will be distributed to members via email where appropriate and all resources will be housed on the Sedgwick Risk Control website to ensure they are always accessible to the members. Staff will continue to explore availability of fixed pricing agreements for specialty services, such as those already established for: sewer compliance; aquatic risk management; ADA compliance; and sidewalk inspection and maintenance.

### **Regional Training**

Risk Control staff will coordinate at least four regional training classes (this includes the annual Sewer and Stormwater Summit). This service includes topic research, trainer selection and fees, location selection, announcements, electronic registration management, and materials coordination. Depending on the response to these initial trainings at one location, regional training for the program year could include multiple locations for the same topic.



### **Oversight of the Risk Management Grant Fund Reimbursements**

The Risk Control Manager will continue to review the submission of Risk Management Grant Fund Reimbursements to ensure submissions are within the program guidelines and submitted by authorized personnel and will provide guidance as needed regarding proposed expenditures. The Risk Control Manager will annually submit a report regarding how members are using the Risk Management Reimbursement Grant funds.

### **Unlimited Phone and Email Consultation**

Provide unlimited access to Sedgwick risk control professionals for technical information and guidance. This service provides one central resource to help answer risk management questions.

### **Sedgwick Risk Control Website Resources**

Members will have unlimited access to all the resources available on the Sedgwick Risk Control website which includes over 300 on-line streaming videos, hundreds of safety training handouts and risk management regulatory publications, recorded safety webinars, sample programs, forms, and checklists. In addition, members will be invited to participate in all live webinars and will be included in the distribution of Sedgwick safety communications.

### **RECOMMENDATION:**

*The Executive Committee recommends the Board approved 2021/2022 Risk Control Service Plan as submitted.*

### **REFERENCE MATERIALS ATTACHED:**

None.

This PROPOSAL is made on March 18, 2021, by and between DKF Solutions Group, LLC (hereinafter referred to as DKF) and the Pooled Liability Assurance Network Joint Powers Authority (hereafter referred to as PLAN JPA). This PROPOSAL is valid until May 30, 2021.

**SCOPE:** PLAN JPA has requested a proposal to coordinate the 2021 Sewer and Stormwater Summit (*Summit*). Details:

1. **Provide a virtual conference capable of accommodating up to 500 participants.**
2. **Marketing of the Summit:**
  - Proposed Sewer and Stormwater Summit Theme: TBD
  - Develop and distribute online marketing and registration emails on a regular basis beginning in early July utilizing the following email databases:
    - State Water Resources Control Board Collections System Database (~1,200 cities/districts and ~1,500 contacts))
    - DKF Solutions Group Sewer System Database (~4,500 contacts)
    - Past Summit attendee database
  - Advertise in the CSRMA/CJPRMA monthly Did You Know e-newsletter and the CWEA online training calendar
  - Beginning in August, begin registrant engagement activities:
    - Video and email tutorials on preparing their agenda using the virtual conference platform
    - Encourage posting of questions to the speakers
    - Create registrant chatrooms on relevant topics and encourage registrants to engage each other
3. **Registration for Event**
  - Registration will be accomplished using DKF's online training registration system
  - Registrants from non-contributing pools will be charged \$50 per person or \$200 per agency/city
4. **Agenda and Schedule**
  - Develop four conference tracks as follows:
    - Collection System Operations
    - Regulatory Compliance, Engineering and Management
    - Collections Worker Safety
    - Stormwater Management
  - Each track will consist of five 50-minute seminar sessions on the related topic.
  - Summit Schedule will be as follows:
    - 7:00am                    Check-In
    - 8:00am                    Session 1 of Tracks 1, 2, 3, 4
    - 9:15am                    Session 2 of Tracks 1, 2, 3, 4
    - 10:30am                  Session 3 of Tracks 1, 2, 3, 4
    - 11:30am                  Session 4 of Tracks 1, 2, 3, 4
    - 11:30-12:30pm          Lunch
    - 12:30-1:30pm            Session 5 of Tracks 1, 2, 3, 4
    - 1:45-2:15                Speaker Chat Rooms open
    - 2:15pm                    Summit Ends
5. **Speakers**
  - Identify and arrange speakers for all sessions
  - Obtain training materials from each speaker

- Each speaker will receive a thank you gift (i.e. gift card for \$50) for their time and effort
- Record each speaker's session

#### 6. Summit Setup

- Manage the setup and delivery of the Summit.
- Setup and manage check-in/registration table.
- Prepare and provide conference material for all attendees (to include speaker handouts, Summit evaluations forms, etc)
- Prepare, distribute and make available certificates for contact hours for registered attendees

#### 7. Summit Follow Up

- Provide PLAN JPA Summit registration roster, speaker evaluations, Summit evaluations and cost analysis
- Provide PLAN JPA with a post summary description of the event, including attendee analysis which includes evaluation results, pool member representations and member names
- Maintain the Summit web site for 6 months for members and registrants to revisit and view recorded sessions

#### **FEE and BUDGET:**

DKF fee for the planning and management of the 2021 Sewer Summit ..... \$20,000

Estimated budget for Sewer Summit expenses (Summit expenses include but are not limited to DKF fee, conference software and supporting software subscriptions, marketing and advertising items, speaker gifts, moderators and credit card processing fees) ..... **\$35,000**

#### **TOTAL ESTIMATED REVENUE:**

##### Contributions:

PLAN JPA: ..... \$12,250

CSRMA: ..... \$20,250

##### Projected Revenue:

Registration Fees from Attendees from Non-Contributing Pools (*projecting 50 people for 2021; Registration fee \$50 per person or \$200 per agency/city*) ..... \$2,500

**TOTAL ESTIMATED REVENUE ..... \$35,000**

**COMPENSATION:** PLAN JPA will be invoiced \$10,000 in September 2021 and the remaining balance following the day of the Summit. Depending on revenue generated from registrations from non-contributing pool attendees and vendor fees, PLAN JPA may be invoiced up to another \$3,000 after the Summit. The amount invoiced will be based on final Summit costs minus contributions from the PLAN JPA, CSRMA and actual revenue split proportionately with the PLAN JPA. In the event of surplus revenue, it will be split proportionately with CSRMA and returned.

**AVAILABILITY:** DKF Solutions Group is available on or after May 15, 2021 to provide the services described in SCOPE.

**ACCEPTANCE:** To accept this proposal from DKF Solutions Group, LLC, for services described in SCOPE under the terms and conditions described herein, please sign below and return.

\_\_\_\_\_  
Name and Title of PLAN JPA Representative

\_\_\_\_\_  
Date

## **RISK CONTROL MATTERS**

**SUBJECT: Update on 2021 Sewer and Stormwater Summit**

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### **BACKGROUND AND HISTORY:**

Attached to this report is the DKF proposal for the 2021 Virtual Sewer and Stormwater Summit. The Summit will be held on October 20, 2021. The proposed cost range for PLAN JPA is \$12,250 to \$15,250. The low end of the proposed range is \$3,257 more than the final cost of the 2020 Virtual Sewer and Stormwater Summit.

Last year's virtual Sewer & Stormwater Summit was well received. There was a 29% increase in PLAN JPA member attendance over the 2019 in-person Summit. Based on that experience, the physical limitation of the hotel in which the Summit has been historically held, and the risk of cancelation due COVID variants, PLAN staff, along with DKF and CSRMA agreed that a virtual Summit was the preferred method.

1. The conference will be provided in a virtual environment available via computer, smart phone, tablet, and iPad.
2. The sessions will be recorded for future use by attendees.
3. Members of sponsor organizations, PLAN JPA and CSRMA, will be able to attend at no charge.
4. A special Agency registration package will be offered for those non-sponsoring agencies whose employees need to maintain education credits.
5. Registration cost for non-sponsoring individuals will be reduced to acknowledge our reduce cost due to the elimination of the food and hotel costs.
6. Links to sponsor organizations will be posted on the virtual conference website.
7. Networking opportunities for attendees will be made available via chat rooms.
8. Attendees will also be able to interact with vendors through chat rooms.
9. Vendors will be provided an opportunity to post videos depicting their services.
10. Vendors will pay a fee to participate to cover the added cost that result from hosting their access points.

The initial payment is \$10,000 will be invoiced in September 2021, with the balance of \$2,250 billed after the event. The contract allows for additional charges up to a maximum of \$3,000 should there be a cost overrun. However, there is a potential to receive a refund if the costs are lower, or the revenues exceed the costs as they did last year.

We anticipate releasing a "hold the date" notice that will include the change to a virtual presentation after the June 17, 2021 Board of Directors' meeting. The registration flyer is anticipated to be sent out in July 2021 with reminders sent periodically up to the week before the Summit.

**RECOMMENDATION:**

*Staff recommends the Board of Director approve proposed PLAN JPA sponsorship of the 2021 Sewer & Stormwater Summit, and provide staff with direction.*

**REFERENCE MATERIALS ATTACHED:**

- Revised DFK Solutions Group 2021 Sewer and Stormwater Summit Proposal

# **POOLED LIABILITY ASSURANCE NETWORK JOINT POWERS AUTHORITY**

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Resolution No. 2021-01

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## **ESTABLISHING THE BOARD OF DIRECTORS, EXECUTIVE COMMITTEE, RISK MANAGEMENT COMMITTEE, FINANCE COMMITTEE, AND CLAIMS COMMITTEE MEETING DATES FOR THE 2021/22 FISCAL YEAR**

### **BE IT RESOLVED THAT:**

The following Board of Directors, Executive Committee, Risk Management Committee, Actuarial Committee, Claims Committee, and Finance Committee meeting dates are hereby established for the 2021/22 fiscal year:

### **BOARD & COMMITTEE MEETING SCHEDULE Fiscal Year 2021/22**

#### **PLAN Board of Directors Meetings:**

- December 9 2021, 10:00 a.m. – location TBD
- June 22, 2022, 9:30 a.m. – location TBD

#### **Executive Committee Meetings:**

- October 26, 2021, 10:00 a.m. – location TBD
- May 17, 2022, 10:00 a.m. – location TBD

#### **Risk Management Committee Meetings:**

- October 5, 2021, 10:00 a.m. – via Videoconference
- April 5, 2022, 10:00 a.m. – via Videoconference

#### **Finance Committee Meetings:**

- March 8, 2022, 10:00 a.m. – via Videoconference

#### **Strategic Planning Session**

- December 8, 2021, 9:30am – location TBD

#### **Claims Committee Meetings:**

*Standing schedule – 4<sup>th</sup> Thursday of each month as needed/required.*

**PASSED AND ADOPTED** by the Board of Directors of the Pooled Liability Assurance Network  
Joint Powers Authority, County of Sacramento, State of California, on DATE by the following vote:

AYES	_____
NOES	_____
ABSENT	_____
ABSTAIN	_____

APPROVED:

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary



1750 Creekside Oaks Drive, Suite 200, Sacramento, CA 95833  
(800) 541-4591 Fax (916) 244-1199  
<https://www.planjpa.org/>

## SEDGWICK (TPA) PLAN PROGRAM CLAIM HANDLING GUIDELINES AND BEST PRACTICES

### A. LOSS REPORTING

All new PLAN member losses (including claim incident reporting) will be reported to Sedgwick TPA by email to [US-YORK-ABAGclaims@Sedgwick.com](mailto:US-YORK-ABAGclaims@Sedgwick.com).

Claims Manager Cynthia Gordon will assign the claims for Adjuster handling.

Claims will be set up and entered into Claims Connect (York Claims Expert- Version B) within 24 hours of receipt of the notice of loss. PLAN and Members will have 24/7 accessibility to online claim info via York Expert Claims System- Version B.

The following steps will occur upon submission of a claim:

1. Sedgwick TPA will acknowledge the assignment within 48 hours of the submission of the claim.
2. A preliminary report will be generated by the Sedgwick Adjuster to the Member Liaison within seven days, incorporating the Adjuster's initial assessment of the following:
  - a. Material Facts;
  - b. Coverage;
  - c. Liability;
  - d. Damages;
  - e. Reserves;
  - f. Plan of Action; and
  - g. Next Diary Date.

Within 30 days of assignment, the Adjuster will issue a full Captioned Report or Claims Management Report (depending on the Member's preference) summarizing the Adjuster's investigation up to that time. The next report date will be reflected in that report with the Adjuster considering the type and extent of investigation pending. Sedgwick's Adjusters will report by email to the designated Member representative in all cases.



Those losses that meet the Excess reporting criteria based upon the nature of injury and/or those where reserves are posted into PLAN's layer will also be reported to PLAN along with a copy of the captioned reports. Reporting will be directed to both [US-YORK-ABAGclaims@Sedgwick.com](mailto:US-YORK-ABAGclaims@Sedgwick.com), and to the appointed PLAN Litigation Manager as follows:

William Portello  
Litigation Manager  
1750 Creekside Oaks Drive, Suite 200  
Sacramento, California  
Direct: (916) 244-1199  
[William.Portello@sedgwick.com](mailto:William.Portello@sedgwick.com)

Cases meeting the following criteria must be reported to the PLAN Litigation Manager, with an indication of the reason for excess reporting, consistent with the requirements of the applicable excess carrier as soon as reasonably practicable:

- a) A serious case, in which the exposure may exceed fifty (50%) percent of the PLAN retained limit based on your or the defense counsel's judgment;
- b) A demand or demands totaling fifty (50%) percent of the PLAN retained limit or more;
- c) Death;
- d) Paralysis, paraplegia, quadriplegia;
- e) Loss of eye(s) or limb(s);
- f) Spinal cord or brain injury;
- g) Sensory organ or nerve injury and/or neurological deficit;
- h) Serious burns;
- i) Substantial disability or disfigurement; or
- j) Loss of work time of six months or more.

The PLAN's General Liability Program limits are \$5 million. Peleus Insurance Company (First Excess Coverage) policy number is #2902087-03 provides \$5 Million in excess above \$5 Million PLAN JPA coverage. The Second Excess Coverage is QBE Specialty Insurance Company policy number QSX01002-00 provides \$5 Million in excess of \$5 Million PLAN JPA Coverage and \$5 Million Peleus Excess Policy. The Third Excess Coverage is Gemini Insurance Company policy number PEM 0000152-00 provides \$5 Million excess of \$5 Million PLAN JPA Coverage, \$5 Million Peleus Excess Policy and \$5 Million QBE Excess Policy. The Fourth excess coverage is Hallmark Specialty Insurance Company, policy number 77PEF20000EC provides \$5 Million Excess \$5 Million PLAN JPA Coverage, \$5 Million Peleus Excess Policy, \$5 Million QBE Excess Company and \$5 Million Gemini Excess Policy. The Fifth excess coverage is Arch Insurance policy number UXP1038841-000 provides \$5 Million excess \$5 Million PLAN JPA Coverage, \$5 Million Peleus excess policy, \$5 Million QBE excess company, \$5 Million Gemini Excess policy and \$5 Million Hallmark excess policy.

Reports to the excess carrier are to be sent to Alliant Insurance Services as follows:

*Alliant Insurance Services-Claims Advocate Group*  
Robert Frey or Elaine Tizon  
100 Pine Street, 11th Floor,  
San Francisco, CA 94111  
Main Phone: 415-403-1400  
Fax: 415-403-1466  
[RFrey@Alliant.com/ETizon@Alliant.com](mailto:RFrey@Alliant.com/ETizon@Alliant.com)

The servicing contacts at Alliant Insurance Service are as follows:

Seth Cole, ARM  
Senior Vice President  
Direct: 415.403.1419  
[scole@alliant.com](mailto:scole@alliant.com)

Stacey Weeks, CRIS  
Vice President  
Direct: 415.403.1448  
[sweeks@alliant.com](mailto:sweeks@alliant.com)

Thomas Joyce  
Technical Assistant  
Direct: 415.403.1417  
[TJoyce@alliant.com](mailto:TJoyce@alliant.com)

## **B. FILE ADMINISTRATION**

Claim files are maintained electronically and managed in York Claims Expert Version- B (Claims Connect). Claim files will be set up so that contents are orderly and contain consistent documentation with the following information:

1. Substantiation of initial reserve analysis;
2. Documentation of investigation and liability analysis;
3. Timely supervisory reviews and diary; and
4. An Action Plan with target dates for completion.

The Claim Management Review Report and/or captioned reports in Word will be utilized for summary purposes at 30 days post assignment. The subsequent Diary Date should follow at intervals no greater than 30 days on files where an investigation is pending and at intervals no greater than 90 days in litigated matters. Routine status reports need not address all captions. When investigation and/or discovery results in significant changes to the file's evaluation, a new full-captioned report or CMR should be completed.

### **C. ADJUSTER CONTACTS**

Two-point contact, preferably voice-to-voice, should be made with the claimant (or attorney) within 48 hours of receipt of the claim. The Adjuster will verify the facts of the loss, request documentation of damages (if any), and identify witnesses. Depending on the severity of loss, the Adjuster may take photos and/or arrange for a recorded statement.

The Adjuster will make at least two phone call attempts to the claimant within 48 hours, and if the Adjuster is unable to make contact during this timeframe, they will follow-up by mail with either a contact card or letter of acknowledgement. The Adjuster will also contact the Member within 48 hours of receipt of notice of a claim to discuss and initiate the investigation process. Member contact and dialog should be clearly documented in the file.

### **D. INVESTIGATION**

Investigation involves issues of liability, with consideration to comparative negligence, risk transfer assessment (contractual) and subrogation/recovery potential. Investigation involves evaluating the causal relationship between the occurrence and the stated injury or property damage. The Adjuster will immediately initiate investigation of any issues that may be material to potential litigation and, where appropriate, arrange for immediate on-site investigation. Opportunities for early resolution should be recognized and acted upon. Investigation should be completed within 30 days of assignment. Investigations not completed within 30 days will be subject to an action plan, outlining specified time frames and responsibilities.

Investigation includes, but is not limited to:

1. Obtaining the following information, as applicable:
  - a. Police reports, Traffic Collision Reports, and/or IA reports;
  - b. Documentation of alleged special damages;
  - c. Claimant's medical records;
  - d. Central Index Bureau's report for prior injury data; and
  - e. Photos/diagram of the occurrence scene and any other supporting documentation.

Additionally, recorded statements, where applicable, should be taken to preserve testimony and oral evidence.

For claims involving serious physical injuries, total loss of vehicle or extensive property damage, the Adjuster may conduct field investigations as appropriate including accident/incident reconstruction. Sedgwick TPA, along with the Member and the PLAN Litigation Manager, will be actively involved in selecting appropriate and qualified vendors to conduct such investigations.

Documented and current action plans will be maintained in the file, based on investigative findings and developments. Action plans will include resolution goals and the specific interim steps needed to move the claim toward resolution. Action plans are reviewed as a part of each diary review. Periodic

evaluation of the file should be conducted to determine whether fraud triggers are present. If fraud triggers are identified, Adjusters will make appropriate internal referrals and notifications.

#### **E. RESERVING**

Sedgwick's Adjuster should establish and document initial reserves within seven days of receipt of the claim. Reserves should be established appropriately to reflect the exposure of the claim based on current facts of the claim and the ultimate probable cost of each claim.

One example of how reserves may be calculated is as follows:

1. Where there is a 75% or greater chance for favorable outcome, reserve for favorable outcome plus 25% of probable adverse outcome.
2. Where there is 51% to 75% chance for favorable outcome, reserve for favorable outcome plus 50% of probable adverse outcome.
3. Where there is a 25% to 50% chance for favorable outcome, reserve for favorable outcome plus 75% of probable adverse outcome.
4. Where there is less than a 25% chance for favorable outcome, reserve for 100% of the probable adverse outcome.

Establishing reserves is also subjective in nature, and reserves may change or vary based on the Adjuster's and/or Defense counsel's initial or subsequent case evaluation, any changes in fact patterns, and/or any changes in the legal expense budget. Precedent jury verdicts and recent jury awards on similar court cases may also influence reserve valuation.

Reserving practice will be overseen by Sedgwick Claim Manager and closely observed by the PLAN Litigation Manager. Member questions regarding reserving practices should be discussed with Cynthia Gordon.

#### **F. GOVERNMENT TORT CLAIMS ASSESSMENT**

Upon receipt of claim, Sedgwick's Adjuster will make Government Code Timeliness, Sufficiency, and Liability assessments and will forward recommendations for response to the Member. Notices will be sent by the Member.

Sedgwick TPA is positioned to assist with sending notices of untimeliness and insufficiency, if requested and also authorized to do so by Member.

#### **G. RECOVERY MANAGEMENT**

Sedgwick's Adjusters will identify claims in which there is potential opportunity for recovery from a third party and in these cases, complete sufficient investigation before referral to PLAN for handling.

## **H. LITIGATION MANAGEMENT**

Sedgwick Adjusters shall become familiar with PLAN Litigation Management Guidelines, which are incorporated into these standards by reference. The PLAN Program requires an initial case evaluation and budget, from defense counsel within 30 days of assignment of counsel. The Adjuster, PLAN Litigation Manager, and defense counsel will review the evaluation and agree on a plan of action, be it dispositive motions or discovery. The Adjuster, PLAN Litigation Manager, and counsel will repeat this process throughout the pendency of the matter, keeping the best interest of the Member and PLAN in mind.

The Adjuster should be proactive and aggressive in identifying cases for early attention and resolution. For example, in cases where liability is adverse to the Member and settlement is desired, steps should be taken which include non-rejection of the claim in order to avoid litigation. In adverse liability matters, whenever possible, limited discovery should be performed with that discovery geared toward evaluation and resolution. However, any such limitations should not prejudice the defense of the case and all necessary discovery and law-and-motion may be utilized if it reasonably appears that a case is not resolving.

On the other hand, there will be cases that must be aggressively defended and prepared for trial.

The Sedgwick Adjuster shall monitor Defense counsel to be certain that the agreed-upon action plan and billing guidelines are followed. Defense counsel's billings shall be reviewed for compliance with the Litigation Management Guidelines and established hourly rates. Billings not in compliance should be returned to defense counsel for necessary adjustments. Any billing dispute should be referred to the PLAN Litigation Manager for resolution.

## **I. CLAIM DISPOSITION & SETTLEMENT RESOLUTION**

Sedgwick will clearly document a written disposition strategy and plan of action with specific time frames for completion in the file. All requests for authority will be clearly documented in the claim file.

Authority requests within the Member's SIR will be directed to the Member Liaison. Authority requests within the PLAN Program layer (above the Member's SIR, and up to \$5 million) are to be directed to the PLAN Litigation Manager, with a copy to the Member for potential Claim Committee consideration.

Once authority has been extended, aggressive and prompt settlement negotiations will be conducted by the Sedgwick Adjuster, or by counsel with Member and PLAN's approval. The Adjuster will consider all possible settlement options, such as Alternative Dispute Resolutions, mediation, arbitration and structured settlements. The claimant's Medicare eligibility will be determined and Medicare's interest resolved with any settlement.

**J. SUPERVISORY CASE REVIEW**

The role of the Supervisor is to guide the process from claim receipt through resolution, to ensure uniform claim management processes are implemented, and to act as a "second set of eyes" on Adjuster actions and decisions. Claims Manager Cynthia Gordon will document all supervisory activity, including suggestions for future claim handling. The Supervisor will approve all reserve recommendations and payment requests. The Supervisor may decide, at any point during the life of the file, that active supervision is no longer necessary, leaving further file activity to the Adjuster.

Documented supervisory review shall occur at least every 90 days upon any claim reaching an incurred value greater than \$25,000 and on all new litigated claims.

**K. COMMUNICATION/ADHERENCE TO SPECIAL INSTRUCTIONS**

Sedgwick Adjusters should maintain adequate communication with the Member and PLAN through methods such as monthly loss runs, status reports, captioned reports, reserve and settlement authorizations, conducting claim reviews and returning phone calls and email inquiries from the Member or PLAN within one business day.

Sedgwick TPA shall provide periodic (monthly, quarterly and annual) cumulative monthly loss runs, as well as Deductible Billing reports to PLAN and Members.

Monthly loss run reports should be provided each month to the Member and PLAN. A report of all claims closed in the preceding fiscal year shall be provided at the end of each fiscal year. A claim status report shall accompany any request for reserve, payment, or settlement over \$25,000. Status reports shall include a synopsis of the loss, the current status of the loss, a proposed action plan, and current financial totals.

PLAN and Sedgwick TPA shall also meet quarterly to discuss the status of all open litigated claims within the PLAN layer or that have a probability of piercing PLAN's layer to develop a plan to complete any additional investigation required to evaluate liability or damages.

Sedgwick TPA should adhere to PLAN's specific instructions with regard to issues such as Location and Department coding, Reserving, Status Reports, Surveillance, Subrogation/contribution recoveries, assignment of defense counsel, and settlement authority.

#### **L. MEDICARE DATA REPORTING**

Sedgwick TPA must become familiar with the PLAN Data Reporting Specifications Document, which is incorporated into these standards by reference. PLAN's RRE is 34614 and its office code is A783-00002. The Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA) requires a Responsible Reporting Entity (RRE) to identify and report bodily injury claims involving a potential Medicare recipient. To do so requires collecting specific claimant data, including:

1. Legal name
2. Date of birth
3. Social security number
4. Gender

#### **M. COVERAGE**

Sedgwick TPA will recognize potential coverage issues and immediately coordinate with PLAN for review with PLAN coverage counsel. Sedgwick TPA will issue Reservation of Rights letters following PLAN Coverage counsel's advice. Declination of coverage letters will be generated by PLAN Coverage counsel.

The PLAN appeals process is articulated in PLAN Claims Policy 3.3 - Coverage Determination and PLAN Revised Risk Coverage Agreement (7.1.1992) - Appendix II Liability Program Procedures. Sedgwick Adjusters may be called upon to present claim findings and disposition during the appeal process starting with Claims Committee review, to Executive Committee, to the full Board of Directors, and finally, if necessary, to Mediation.

# **Pooled Liability Assurance Network JPA (PLAN)**

## **Investment Policy**

<b>Adopted:</b>	<b>September, 1987</b>
<b>Revised:</b>	<b>May 6, 1997</b>
<b>Revised:</b>	<b>May 22, 2002</b>
<b>Revised:</b>	<b>May 25, 2005</b>
<b>Reaffirmed:</b>	<b>June 11, 2009</b>
<b>Revised:</b>	<b>January 24, 2017</b>
<b>Revised:</b>	<b>June 20, 2018</b>
<b>Revised:</b>	<b>June 12, 2019</b>
<b>Revised:</b>	<b>June 11, 2020</b>
<b>Revised:</b>	<b>XXXX, 2021</b>



## **1.0 Policy**

It is the policy of the Pooled Liability Assurance Network JPA (PLAN) to invest its financial assets in a manner which will provide maximum security with a market rate of return, while meeting its cash flow demands and conforming to all applicable laws governing the investment of public funds.

## **2.0 Scope**

This Investment Policy (the “Policy”) shall apply to all funds and investment activities under the direct control of PLAN.

## **3.0 Prudence**

Pursuant to California Government Code Section 53600.3, all persons authorized to make investment decisions on behalf of PLAN are trustees and therefore fiduciaries subject to the prudent investor standard: “When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law.”

## **4.0 Objectives**

The overall program shall be designed and managed with a degree of professionalism worthy of the public trust. The primary objectives, in order of priority, of PLAN’s investment activities shall be:

- 1) Safety.** Safety of principal is the foremost objective of the investment program. PLAN’s investments shall be undertaken in a manner that seeks to ensure preservation of capital in the overall portfolio.
- 2) Liquidity.** PLAN’s investment portfolio will remain sufficiently liquid to enable PLAN to meet its reasonably anticipated cash flow requirements.
- 3) Return on Investment.** PLAN seeks to maximize the return on its investments, consistent with constraints imposed by its objectives of safety and liquidity.

## **5.0 Delegation of Authority**

The investment authority will be vested in the Treasurer, as defined and established in PLAN’s bylaws. Upon the approval of this Investment Policy on an annual basis, PLAN will be adhering to Government Code Section 53607 which states in pertinent part: “The authority of the legislative body to invest or to reinvest funds of a local agency, or to sell or exchange securities so purchased, may be delegated for a one year period by the legislative body to the treasurer of the local agency, who shall thereafter assume full responsibility for those transactions until the delegation of authority is revoked or expires.”

The Treasurer may delegate investment decision making and execution authority to an investment advisor. The advisor shall follow the Investment Policy and such other written instructions as are

provided.

The Treasurer and the delegated investment officers acting in accordance with written procedures and the Investment Policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

## **6.0 Ethics and Conflicts of Interest**

Officers and employees involved in the investment process shall refrain from personal business activities that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Employees and investment officials shall disclose to the President any material financial interests in financial institutions that conduct business with PLAN, and they shall further disclose any material financial interest that could be related to the performance of PLAN, particularly with regard to the time of purchases and sales. For purposes of this section "material financial interests" means any interest described in Government Code Sections 87103(a)-(e), as they may be amended from time to time.

## **7.0 Internal Controls**

The Treasurer shall maintain a system of written internal controls to regulate PLAN's investment activities, including the activities of any subordinate officials acting on behalf of PLAN. As part of the annual financial audit, PLAN's external auditor will perform a review of investment transactions to verify compliance with policies and procedures.

## **8.0 Authorized Financial Dealers and Institutions**

A competitive bid process shall be used to place all investment transactions; a minimum of three quotes shall be obtained on all purchase and sales of securities, when practical. It shall be PLAN's policy to purchase securities only from those authorized institutions and firms. No deposit of public funds shall be made except in a qualified public depository as established by state laws.

The Treasurer shall maintain a list of authorized broker/dealers and financial institutions which are approved for investment purposes. The purchase by PLAN of any investment other than those purchased directly from the issuer, shall be purchased either from an institution licensed by the State as a broker-dealer, as defined in Section 25004 of the Corporations Code, which is a member of the Financial Industry Regulatory Authority (FINRA), or a member of a federally regulated securities exchange, a national or state chartered bank, a federal or state association (as defined by Section 5102 of the Financial Code), or a brokerage firm designated as a Primary Government Dealer by the Federal Reserve Bank.

PLAN requires each firm that will be used for the purchase or sale of securities to be evaluated by the Treasurer prior to any investments. The firms shall submit current financial statements, and annual audited financial statements each year thereafter, which are to be evaluated by the Treasurer. At a minimum, the firm must be financially sound and have been in business a minimum of three years. In addition, the firms must provide: proof of the licensing or membership described above, trading resolutions, proof of state registration or exemption, and certificate of having read PLAN's Investment Policy.

If PLAN has retained the services of an investment advisor, the investment advisor may use its own

list of authorized broker/dealers to conduct transactions on behalf of PLAN.

## **9.0 Authorized and Suitable Investments**

PLAN is governed by Government Code, Sections 53600 et seq. Within the investments permitted by the Government Code, PLAN seeks to further restrict eligible investment to the investments listed below. In the event an apparent discrepancy is found between this Policy and the Government Code, the more restrictive parameters will take precedence. The maturity and sector allocation limits are applied at the time of purchase.

Credit criteria listed in this section refers to the credit quality of the issuing organization at the time the security is purchased. In the event of a downgrade below the minimum credit rating requirements listed below, the Treasurer or the investment advisor, if so designated, must notify PLAN of such downgrade within 15 days of the downgrade and will use their best professional judgment to determine the appropriate course of action.

The portfolio shall be diversified by security type and institution to avoid incurring unreasonable and avoidable risks regarding specific security types or individual financial institutions.

1. United States Treasury Issues.\*\* United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest. United States Treasury Issues cannot exceed a maturity of 5 years. There is no limitation as to the percentage of the portfolio that may be invested in this category.
2. Federal Agency Obligations.\*\* Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises. Federal Agency Obligations cannot exceed a maturity of 5 years. There is no limitation as to the percentage of the portfolio that may be invested in this category. In addition, purchases of Federal Agency mortgage-backed securities issued by or fully guaranteed as to principal and interest by government agencies are limited to a maximum of 20 percent of the portfolio.
3. Medium-term notes.\*\* Medium-term notes are defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Purchases are limited to securities rated in a rating category of “A” or its equivalent or better by a nationally recognized rating service (NRSRO). A maximum of 30 percent of the portfolio may be invested in this category. The amount invested in the medium-term notes of any one issuer in combination with any other securities from that issuer shall not exceed 5 percent of the portfolio.
4. Bankers’ Acceptances. Bankers’ acceptances, otherwise known as bills of exchange or time drafts that are drawn on and accepted by a commercial bank. Purchasers are limited to issuers whose short-term debt is rated A-1/P-1 or its equivalent or better by an NRSRO. Bankers’ acceptances cannot exceed a maturity of 180 days. A maximum of 25 percent of the portfolio may be invested in this category. The amount invested in bankers’ acceptances with any one financial institution in combination with any other securities from that financial institution shall not exceed 5 percent of the portfolio.

5. Commercial Paper. Commercial paper of “prime” quality of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical-rating organization. The entity that issues the commercial paper shall meet all of the following conditions in either paragraph (A) or paragraph (B):
  - (A) The entity meets the following criteria: (i) Is organized and operating in the United States as a general corporation. (ii) Has total assets in excess of five hundred million dollars (\$500,000,000). (iii) Has debt other than commercial paper, if any, that is rated in a rating category of “A” or its equivalent or higher by a nationally recognized statistical-rating organization.
  - (B) The entity meets the following criteria: (i) Is organized within the United States as a special purpose corporation, trust, or limited liability company. (ii) Has program wide credit enhancements including, but not limited to, over collateralization, letters of credit, or surety bond. (iii) Has commercial paper that is rated “A-1” or higher, or the equivalent, by an NRSRO.

Eligible commercial paper shall have a maximum maturity of 270 days or less ~~and not represent more than 10 percent of the outstanding paper of an issuing corporation.~~ A maximum of 25 percent of the portfolio may be invested in this category. The amount invested in commercial paper of any one issuer in combination with any other securities from that issuer shall not exceed 5 percent of the portfolio.

6. Negotiable Certificates of Deposit.\*\* Negotiable certificates of deposit (NCDs) issued by a nationally or state-chartered bank, a savings association or a federal association, a state or federal credit union, or by a state-licensed branch of a foreign bank. Purchases are limited to NCDs rated in a rating category of “A” or its equivalent or better for long-term obligations, and “A-1” or its equivalent or better for short-term obligations. NCDs may not exceed 5 years in maturity. A maximum of 30 percent of the portfolio may be invested in this category. The amount invested in NCDs with any one financial institution in combination with any other securities from that financial institution shall not exceed 5 percent of the portfolio.
7. Time Certificates of Deposit. Time Certificates of Deposit (TCDs) placed with commercial banks and savings and loans. The purchase of TCDs from out-of-state banks or savings and loans is prohibited. The amount on deposit shall not exceed the shareholder’s equity in the financial institution. To be eligible for purchase, the financial institution must have received a minimum overall satisfactory rating for meeting the credit needs of California Communities in its most recent evaluation, as provided in Government Code Section 53635.2. TCDs are required to be collateralized as specified under Government Code Section 53630 et. seq. The Treasurer, at the Treasurer’s discretion, may waive the collateralization requirements for any portion that is covered by federal insurance. PLAN shall have a signed agreement with the depository per Government Code Section 53649. TCDs may not exceed 5 year in maturity. A maximum of 10 percent of the portfolio may be invested in this category. The amount invested in TCDs with any one financial institution in combination with any other securities from that financial institution shall not exceed 10 percent of the portfolio.
8. Money Market Funds. Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 and following). The company shall have met either of the following criteria: (A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two NRSROs. (B) Retained an investment

adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years of experience managing money market mutual funds with assets under management in excess of five hundred million dollars (\$500,000,000). A maximum of 10 percent of the portfolio may be invested in this category.

9. State of California Local Agency Investment Fund (LAIF). There is no limitation as to the percentage of the portfolio that may be invested in this category. However, the amount invested may not exceed the maximum allowed by LAIF. For due diligence, a copy of LAIF's current investment policy and its requirements for participation, including limitations on deposits or withdrawals shall be maintained on file.

Under the California Government Code, LAIF is allowed greater investment flexibility than PLAN is permitted. As such, LAIF's investment portfolio may contain investments not otherwise permitted under this policy. For funds invested with LAIF, LAIF's investment policy overrides PLAN's investment policy.

10. Municipal Obligations.\*\* Municipal obligations shall be permissible as described in either paragraph (A), (B), or (C) below:

- (A) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.
- (B) Registered treasury notes or bonds of any of the other 49 states in addition to California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the other 49 states, in addition to California.
- (C) Bonds, notes, warrants, or other evidences of indebtedness of a local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

A maximum of 30 percent of the portfolio may be invested in any combination of the municipal obligations as described in paragraphs (A), (B), or (C) above. Purchases are limited to municipal obligations rated in a rating category of "A" or its equivalent or better. Further, the amount invested in any one municipal issuer may not exceed 5 percent of the portfolio.

11. Asset Backed Securities (ABS). A mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond. Securities eligible for investment under this subdivision shall be rated in a rating category of "AAA" or its equivalent by an NRSRO and have a maximum remaining maturity of five years or less. Purchase of securities authorized by this subdivision shall not exceed 20 percent of the portfolio. Further, the amount invested in any one ABS issuer in combination with any other securities from that issuer shall not exceed 5 percent.
12. Local Government Investment Pools. Shares of beneficial interest issued by a joint powers authority organized pursuant to California Government Code Section 6509.7 that invests in the securities and obligations authorized in subdivisions (a) to (19), inclusive. Each share shall represent an equal proportional interest in the underlying pool of securities owned by the joint powers authority. To be eligible under this section, the joint powers authority issuing the shares

shall have retained an investment adviser that meets all of the following criteria:

- (1) The adviser is registered or exempt from registration with the Securities and Exchange Commission.
- (2) The adviser has not less than five years of experience investing in the securities and obligations authorized in subdivisions (a) to (q), inclusive.
- (3) The adviser has assets under management in excess of five hundred million dollars (\$500,000,000).

Further, the shares of beneficial interest shall be rated in a rating category of AAA or its equivalent by an NRSRO.

13. Supranational Obligations.\*\* United States dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development, International Finance Corporation, or Inter-American Development Bank, with a maximum remaining maturity of five years or less, and eligible for purchase and sale within the United States. Investments under this subdivision shall be rated in a rating category of “AA” or its equivalent or better by an NRSRO and shall not exceed 30 percent of the portfolio.

\*\* The aggregate total of investments in callable notes in is limited to 25.0% of the portfolio.

Please see Appendix A for a summary of authorized and suitable investments.

## **10.0 Prohibited Investment Practices and Instruments**

Any investment in a security not specifically listed in Section 9.0 above, but otherwise permitted by the Government Code, is prohibited without the prior approval of the Board. Section 53601.6 of the Government Code specifically disallows investments in inverse floaters, range notes, or interest-only strips that are derived from a pool of mortgages. In addition to the limitations in Government Code Section 53601.6, this Policy further restricts investments as follows: (1) PLAN shall not engage in leveraged investing, such as in margin accounts or any form of borrowing for the purpose of investment, (2) PLAN shall not invest in securities with floating coupon interest rates, and (3) no investment will be made that has either (a) an embedded option or characteristic which could result in a loss of principal if the investment is held to maturity, or (b) an embedded option or characteristic which could seriously limit accrual rates or which could result in zero accrual periods, except that, in the event of, and for the duration of, a period of negative market interest rates, PLAN may invest in securities issued by, or backed by, the United States government that could result in zero- or negative-interest accrual if held to maturity. Before the initial investment in such zero- or negative-interest accrual securities, the investment advisor, if so retained, shall inform PLAN of its intent to purchase such securities along with a rationale. At which point, PLAN may approve or reject such purchases.

## **11.0 Duration and Maximum Maturity**

It is the objective of this Policy to provide a system which will accurately monitor and forecast revenues and expenditures so that PLAN can invest funds to the fullest extent possible. PLAN's funds will be invested in accordance with sound treasury management principles.

Assets in the Operating Fund (projected administration expenses and claim payments for a fiscal year) will be invested in pooled funds, LAIF, or other highly liquid securities.

Assets in the Claims Liability Fund and the Long-Term Fund will be invested in an individual portfolio of securities. Claims Liability Fund (assets needed to fully fund the Pool as determined by the

actuary) will be invested to achieve an average duration that closely matches the duration of Claims Liability as calculated by the actuary. Assets in the Long-term Fund represent assets in excess of full funding requirements of the Pool. Assets in this category can be invested in securities with durations and yields that are higher than those in the Claims Liability Fund.

The maximum maturity of individual investments shall not exceed the limits set forth in Section 9.0. The Board has approved the investment in U.S. Treasury and Federal Agency obligations with a maximum maturity of up to five years. No investment shall exceed a maturity of five years from the date of purchase unless the Board has granted express authority to make that investment either specifically or as a part of an investment program approved by the Board no less than three months prior to the investment.

### **12.0 Safekeeping and Custody**

All security transactions entered into by PLAN shall be conducted on a delivery-versus- payment (DVP) basis. All cash and securities in PLAN's portfolio shall be held in safekeeping in PLAN's name by a third party bank trust department, acting as agent for PLAN under the terms of a custody agreement executed by the bank and PLAN. The only exception to the foregoing shall be depository accounts and securities purchases made with: (i) local government investment pools; (ii) time certificates of deposit, and, (iii) money market mutual funds, since the purchased securities are not deliverable. Evidence of each these investments will be held by PLAN.

### **13.0 Performance Benchmark**

PLAN seeks to attain market rates of return on its investments throughout economic cycles, consistent with constraints imposed by its safety objectives and cash flow consideration. The Treasurer shall continually monitor and evaluate the portfolio's performance. A comparison of the portfolio's performance against a performance benchmark shall be included in the Treasurer's quarterly report. The Treasurer shall recommend an appropriate, readily available market index to use as a performance benchmark.

### **14.0 Reporting**

The Treasurer shall submit a quarterly investment report to the Executive Committee in advance of the Executive Committee's next scheduled meeting. The report shall include the following information for each individual investment: Description of investment instrument, issuer name, maturity date, credit rating, coupon rate, yield, purchase price, par value, book value, current market value and the source of the valuation. The quarterly report shall also state compliance of the portfolio to the statement of investment policy, or manner in which the portfolio is not in compliance, and include a statement denoting PLAN's ability to meet its expenditure requirements for the next six months, or provide an explanation as to why sufficient money may or may not be available. The report shall also include a list of monthly investment transactions.

### **15.0 Policy Adoption**

The policy shall be reviewed annually by the Finance Committee. The policy shall be adopted annually by the Board at a public meeting. Any change in the policy shall also be reviewed and approved by the Board at a public meeting.

**Appendix A**  
**Summary of Authorized and Suitable Investments**

This table is for general reference only. Please see the body of the Policy for a listing of all requirements.

<b>Security Type**</b>	<b>Maturity Limits</b>	<b>Maximum Portfolio Percentage Holdings</b>	<b>Rating Requirements</b>
United State Treasury Securities	5 years	100%	None
Federal Agency Obligations	5 years	100% 20% limit on mortgage-backed securities.	None
Medium-Term Corporate Notes	5 years	30% 5% limit per issuer (applies across security types)	A
Bankers' Acceptances	180 days	25% 5% limit per issuer (applies across security types)	Issuers with a short-term rating of A-1/P-1
Commercial Paper	270 days	25% 5% limit per issuer (applies across security types)	A-1/P-1/F-1
Negotiable Certificates of Deposit	5 years	30% 5% limit per issuer (applies across security types)	A / A-1
Time Certificates of Deposit	5 year	10% 10% limit per issuer (applies across security types)	Must have CRA rating "satisfactory"
Money Market Funds	N.A.	10%	AAA rated fund or manager with a minimum 5 years' experience and \$500 million under management
State of California Local Agency Investment Fund	N.A.	100% (may not exceed the maximum allowed by LAIF )	None (LAIF is unrated)
Municipal Obligations	5 years	30% 5% limit per issuer (applies across security types)	A / A-1
Asset-Backed Securities	5 years	20% 5% limit per issuer (applies across security types)	AAA
Local Government Investment Pools	N.A.	100%	AAA
Supranational Obligations	5 years	30%	AA

\*\* The aggregate total of investments in callable notes is limited to 25.0% of the portfolio.





May 17, 2021

## Memorandum

To: Ritesh Sharma, Finance Manager  
*Pooled Liability Assurance Network JPA (PLAN)*

From: Lesley Murphy, Senior Managing Consultant  
*PFM Asset Management LLC*

Re: Investment Policy Review

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We have completed our annual review of the Investment Policy (the “Policy”) for the Pooled Liability Assurance Network JPA (PLAN). The Policy remains in compliance with the sections of California Government Code (Code) that govern the investment of public funds. This year, our proposed changes to the Policy are minor and designed to reflect recent updates and/or to provide additional clarity to the Policy.

Additionally, we want to make PLAN aware of several recent changes to the sections of California Government Code that govern the investment of public agency funds.

We have also included a redlined version of the Policy with our proposed modifications, including a modification that was requested by the Executive Committee during the recent meeting on May 13, 2021.

### **Information and Recommended Modifications Related to Code Changes**

#### **Assembly Bill 857 - Overview**

In last year’s review, we made PLAN aware of Assembly Bill No. 857, which took effect on January 1, 2020, and provides for the establishment of public banks by local agencies. It also added subsection (r) to Code section 53601, which permits local agencies to invest in the commercial paper, debt securities, or other obligations of such public banks.

As we stated last year, we do not recommend that PLAN add this investment type as a permitted investment instrument in its Policy. However, we do note that the addition of subsection (r) to Code 53601 impacted the language in Code Section 53601(p), shares of beneficial interest issued by a joint powers authority (also referred to as Local Government Investment Pools), an



investment type currently allowed by PLAN's Policy. Thus, we recommend that PLAN edit *Section 9, subsection 12* of its Policy to address this change.

#### Senate Bill 998 - Overview

Senate Bill 998 ("SB 998"), which took effect on January 1, 2021, and shall be in effect until January 1, 2026, made a number of amendments to certain sections of the Code which govern the investment of public funds, including:

1. allowing investment in securities issued or backed by the U.S. government that could result in zero or negative interest accrual if held to maturity, in the event of, and for the duration of, a period of negative market interest rates;
2. deleting the commercial paper language regarding the issuing corporation's outstanding paper;
3. establishing a 10% issuer limit on commercial paper and corporate notes for all agencies, other than a county or a city and county;
4. allowing local agencies that have more than \$100 million of investment assets under management to invest up to 40% in commercial paper (existing limit is 25% for all agencies, other than a county or a city and county); and
5. adding permission for federally recognized Indian tribes to invest and participate in investment JPAs.

#### Senate Bill 998 – Analysis & Recommendation

Our analysis and recommendations for PLAN's Policy with respect to each bullet are described below:

1. We recommend that PLAN amend the prohibited investments language under *Section 10* of its Policy to reflect the fact that public agencies are now permitted to invest in zero- or negative-interest accrual securities, under certain circumstances, and provided that the securities are issued by, or backed by, the United States government. While we do not view that investment in such security types is likely, we do recommend that PLAN allow these types of investments, in order to better align with Code language, and to provide maximum prudent investment flexibility. Additionally, in response to a request made by the Executive Committee, we have included language requiring notification and approval prior to the initial purchase of such zero- or negative-interest accrual securities.



2. With regard to bullet 2, we recommend that PLAN strike the language related to PLAN's holdings of the outstanding commercial paper of a single issuer (*Section 9, subsection 5*) to be consistent with Code.
3. With regard to bullet 3, we are not recommending any changes to PLAN's Policy; we note that the Policy already establishes a more stringent 5% issuer limit across all credit-sensitive security types.
4. With regard to bullet 4, we are not recommending any changes to PLAN's Policy as PLAN's assets under management are less than \$100 million.
5. The change described in bullet 5 does not impact PLAN's Policy.

Please feel free to contact me at your convenience should you have any questions or concerns.

# Pooled Liability Assurance Network Joint Powers Authority

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Resolution No. 2018-02

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## **AMENDED RESOLUTION OF THE BOARD OF DIRECTORS OF THE POOLED LIABILITY ASSURANCE NETWORK JOINT POWERS AUTHORITY ESTABLISHING THE JPA’S RECORDS RETENTION POLICY**

WHEREAS, the Pooled Liability Assurance Network Joint Powers Authority (“Authority”) has an obligation to create and maintain information in accordance with legal requirements and accepted records management practices and standards;

WHEREAS, the purpose of this resolution is to establish and implement a records management policy with a standard protocol and procedures for the retention, destruction and disposition of Agency records (as defined below);

WHEREAS, this policy is adopted pursuant to and is subject to Government Code sections 26201 to 26206.7.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Authority as follows:

1. General. This policy supersedes any prior records retention policy. For purposes of this policy, “record” means any “writing” as defined under the Public Records Act at Government Code section 6252(g) that is a “public record” as defined at section 6252(e).

2. Records Retention Schedule. The Board of Directors finds and determines that the retention of records beyond these retention periods is not necessary or required for Authority purposes. Except as otherwise provided by this policy and federal and state law, the Authority shall maintain records for at least the applicable retention period in accordance with the following Records Retention Schedule:

### **RECORDS RETENTION SCHEDULE**

<b><u>Category</u></b>	<b><u>Retention Period</u></b>
<b>ADMINISTRATION</b>	
Accreditation Reports	Permanent
Correspondence	2 years
Joint Exercise of Powers Agreement and Amendments	Permanent
All Other Governing Documents	Permanent
Responses to Bids/Request for Proposals/ Request for Qualifications	5 years
Roster of Public Agency Filing	Permanent
Agreements and Contracts (Excluding Capital Improvements)	7 years after completion or termination

**Category****Retention Period**

Construction/Capital Improvements

Permanent

Record of real property title (e.g., deeds, easements, liens)

Permanent

**BOARD OF DIRECTORS/COMMITTEES**

Agendas and Reports

Permanent

Meeting Notes

5 years

[Recording of Meetings](#)[Until Approval of Minutes](#)

Minutes of Board Meetings

Permanent

Resolutions

Permanent

**ELECTIONS/CONFLICT OF INTEREST**

Ballots

Permanent

Conflict of Interest Statements

7 years from filing

Conflict of Interest Code

Current + 7 years

Fair Political Practices Filings

Termination of office + 7 years

(Statement of Economic Interest, Elected Official)

Fair Political Practices Filings

Termination of office + 5 years

(Statement of Economic Interest, Non Elected)

**FINANCIAL****Accounts Payable**

A/P Distribution Journal

Current + 7 years

Cash Disbursements

Current + 7 years

Correspondence

Current + 7 years

Expense Reports

Current + 7 years

Invoices

Current + 7 years

**Accounts Receivable**

A/R Register

Current + 7 years

Aged Trial Balance

Current + 7 years

Invoices

Current + 7 years

**Banking**

Bank Reconciliations

Current + 7 years

Bank Statements

Current + 7 years

Checks

Current + 7 years

Deposit/Receipts

Current + 7 years

Signature Authorizations

Current + 7 years

**Category****Retention Period****Revenue Bonds**

Account Statements

Closed + 10 years

Administration

Closed + 10 years

Bonds and Coupons

Closed + 2 years

**Budget**

Adopted

Permanent

Proposed

Current + 2 years

**Financial Reporting**

Actuarial Studies

Permanent

Financial Audits

Permanent

General Ledger

Permanent

Interim Financial Statements

Audit + 7 Years

Investment Reports

Audit + 7 Years

State Controller Report

Permanent

Treasurers Reports

Audit + 7 Years

**INSURANCE/COVERAGE**

Additional Covered Party Endorsements

Permanent

Certificates of Coverage

Permanent

Claims Audits

Permanent

Coverage Opinions

Permanent

Endorsements

Permanent

Excess and Reinsurance Contracts

Permanent

Insurance Bonds/Fidelity Bonds

Permanent

Insurance Policies

Permanent

Memoranda of Coverage

Permanent

Underwriting Files

Permanent

**CLAIMS & LEGAL**

Accident Reports

Closed + 2 years unless litigated

Activity Reports

Closed + 2 years

Attorney Correspondence

Permanent

Claim Files with TPA

Closed + 5 years unless return requested by member  
3 years from age of 18 or 7 years – whichever is  
longer from closure

Claims Involving Minors

3 years

General Correspondence

Closed + 2 years unless litigated

Incident Reports

7 years after litigation is concluded

Litigation Files

Loss Runs

Current year end report + 7 years

Legal Opinions

Permanent

<b><u>Category</u></b>	<b><u>Retention Period</u></b>
Workers' Compensation Claim Files, Reports and Incident Reports	7 years from date of injury; or one year from date compensation was last provided; or when all compensation which may be due has been paid – whichever is latest.
Workers' Compensation Claim Logs	7 years from the end of the year covered
Claims Involving Medicare Set Asides	10 years from date of final resolution
Claims For Which Provisions for Future Medical Have Been Agreed Upon (Related to Medicare)	6 years from date of final resolution

## **MEMBERSHIP**

Appointment Resolutions and Letters	Permanent
Membership Records	Permanent
Payroll/Volunteer Audit & Tax Forms	Permanent

## **MISCELLANEOUS**

Permanent until Reclassified (If reclassified into another category, the time limits of that category will apply)

## **RISK MANAGEMENT & SAFETY**

Risk Management Reports and Audits	Closed + 3 years
Training Records - Non-Safety	Current + 2 years
Training Records – Safety	Current + 5 years

## **OTHER**

For records not listed above, the Authority shall follow the retention schedule in the *Local Government Records Retention Guidelines* (Feb. 2006) prepared by the City Clerks' Association of California and approved by the League of California Cities (available at <http://www.sos.ca.gov/archives/local-gov-program/pdf/records-management-8.pdf>)

3. Records Destruction Authorized. The Authority may destroy or dispose of any record after the expiration of the applicable retention period in the Records Retention Schedule. The Authority at any time may destroy or dispose of (a) any record that does not contain information relating to the conduct of the Authority's business or that otherwise is not a public record, and (b) any duplicate record if the original or a copy of the record is maintained on file.— However, the Authority shall not destroy or dispose of any record that has not fulfilled the administrative, fiscal or legal purpose for which it was created or received.

4. Preservation in Electronic Format. The Authority, at any time, may destroy or dispose of any paper record that is not expressly required by law to be preserved in original paper format

if the following conditions relating to electronic storage of records are complied with: (a) the record is photographed, microphotographed, reproduced by electronically recorded video images on magnetic surfaces, recorded in the electronic data processing system, recorded on optical disk, or reproduced on film or any other medium that is a trusted system and that does not permit additions, deletions, or changes to the original document; (b) the device used to reproduce the record on film, optical disk, or any other medium is one that accurately reproduces the original record in all details and that does not permit additions, deletions, or changes to the original document images; and, (c) the photographs, microphotographs, or other reproductions on film, optical disk, or any other medium are placed in conveniently accessible files and provision is made for preserving, examining, and using the files.

5. Process of Destruction and Disposal. Records not containing information of a confidential or proprietary nature may be disposed of or destroyed by means of recycling, waste removal service, shredding or other reasonable method of disposal or destruction. Records containing confidential or proprietary information must be shredded or otherwise permanently destroyed. Records recorded on electronic or magnetic media may be erased and the media re-used or discarded. For records destroyed or disposed of pursuant to the Records Retention Schedule, the Authority will prepare or have prepared a certificate or log describing the date and records destroyed/disposed of.

6. Pending Public Records Act Request. For any record that is subject to destruction or disposal and is the subject of a pending request made pursuant to the Public Records Act, and whether or not the Authority maintains that the record is exempt from disclosure, the Authority shall not destroy or dispose of the record until the request has been granted or two years have elapsed since the Authority provided written notice to the requester that the request has been denied.

**PASSED AND ADOPTED** by the Board of Directors of the Pooled Liability Assurance Network Joint Powers Authority, County of Sacramento, State of California, on ~~June 20~~June 18, 202118, by the following vote:

AYES	_____
NOES	_____
ABSENT	_____
ABSTAIN	_____

APPROVED:

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary



## SERVICE AGREEMENT FOR POOL ADMINISTRATION

This Service Agreement for Pool Administration (this "Agreement") is made and entered into this first day of July 2021, by and between ~~Pooled~~<sup>Public</sup> Liability Assurance Network Joint Powers Authority ("PLAN" or "Client") and Sedgwick Claims Management Services, Inc. ("Sedgwick").

### RECITALS

1. Client desires that Sedgwick provide certain pool administration services.
2. Sedgwick is willing to provide such services on the terms and conditions hereinafter stated.

### AGREEMENT

1. **Services to Be Performed by Sedgwick:** Sedgwick shall provide Client with the services set forth on Attachment A (the "Services"). Sedgwick, when mutually agreed by Client and Sedgwick, may perform additional services. Payment for said additional services shall be as mutually agreed.
2. **Obligations of Client:** Client shall:
  - A. Require member agencies to provide any information required by Sedgwick to carry out the duties pursuant to this Agreement;
  - B. Require member agencies to be truthful with Sedgwick, cooperate with Sedgwick's staff, cooperate in the conduct of Client's programs, and keep Sedgwick informed of any developments which could impact the operations of Client;
  - C. Appoint a member of Sedgwick's staff as Client's General Manager, Assistant General Manager, Finance Manager, Litigation Manager, Risk Control Manager, and Secretary;
  - ~~D.~~ At Client's expense, if required, appoint a qualified firm to invest the reserve funds of Client; and
  - ~~D.~~
  - ~~E.~~ At Client's expense, purchase Public Officials' Errors and Omissions covering Client and the staff appointed pursuant to Section 2.C. above in an amount not less than \$1,000,000 per occurrence.
3. **Discontinuance of Operations:**

Should Client discontinue its business for any reason, all fees due Sedgwick for the remainder of the contract term or the end of the applicable notice period under Section 7, whichever is less, shall be paid immediately. Sedgwick shall have no further obligation to continue to provide the services called for in this Agreement, and, at Sedgwick' option, this Agreement shall be considered terminated as of the date Client ceases operations or is subject to a bankruptcy or receivership filing, either voluntarily or involuntarily.
4. **Covered Jurisdictions:**

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This Agreement shall cover the Services for Client in the following jurisdictions: California.

**5. Payments:**

Sedgwick hereby agrees to perform the services set forth in this Agreement based on the following contract amounts. These contract amounts shall be payable in four (4) quarterly payments, each due by the 30<sup>th</sup> of the month following the month in which the services are invoiced.

The following fees represent the total compensation for the services described in Attachment A. To the extent the services provided to the Client under this Agreement should substantially increase because of the demand for additional services, the parties agree to negotiate in good faith the cost of such additional services. The Client shall pay Sedgwick all fees on a quarterly basis, in arrears.

A. The Annual Base Contract Price (ABCP) for the first year of service shall be \$968,429.

**BD. Fee Adjustment – Annualization**

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The ABCP shall be increased 3% annually after the first year of the Agreement per the following schedule:

<u>Fiscal Year</u>	<u>Annual Fee</u>
2021/2022	\$ 968,429
2022/2023	\$ 997,482
2023/2024	\$1,027,406
2024/2025	\$1,058,228
2025/2026	\$1,089,975

**6. New and Terminating Member Agencies of Client:**

Nothing in this Agreement shall prevent PLAN from adding new members; however, for each new member agency added, in addition to the ABCP, as shown in Section 5. above, Sedgwick shall receive additional compensation which shall be calculated based on the program(s) the new member joins. This calculation shall be made when the new member joins the respective program listed below. Members of the Authority on June 30, 2021 shall be exempted from this calculation.

This adjustment to the ABCP will be a variable amount calculated by multiplying the rate shown below times the members' "Projected Annual Payroll" as calculated in the budget for the program year they are joining when they join each respective program. The following summarizes the program and rate for each.

<u>Coverage Program</u>	<u>Fee as a % of Projected Annual Payroll</u>
Liability	0.050%
Property	0.010%

The annual adjusted amounts shall be pro-rated for the number of months remaining in the fiscal year in which the new member joins. However, such addition shall create a new ABCP, which shall be the sum of the old ABCP plus the annual (non-prorated) amount added for the new member.

Sedgwick shall also reduce its ABCP via the same calculation, should an existing member leave PLAN. However, this reduction shall be effective only in the second full year after the member has exited the program in recognition of the fact that the work with respect to terminating members does not begin to subside until that time.

7. **Term of Agreement and Termination:**

- A. The term of this Agreement shall be for the period commencing on July 1, 2021 and ending on June 30, 2026.
- B. This Agreement may be terminated by either party at any time, provided that at least ninety (90) days prior written notice of the effective date of termination is given to the other party.
- C. This Agreement may be terminated prior to the expiration of the term in any one of the following ways:
  - i. By mutual agreement of the parties, expressed in writing.
  - ii. By either party, without cause, by providing the other party not less than ninety (90) days written notice.
  - iii. By either party at any time, for good cause, but only after written notice to the other party. The party attempting to terminate this Agreement for good cause shall specifically outline in writing the factual bases for the allegations of good cause as defined herein and shall give the other party thirty (30) days after receiving the written notice of termination for good cause to cure the alleged cause for termination. The terminating party shall not unreasonably refuse to accept the proposed cure offered by the other party.
- D. "Good cause" is defined as:
  - i. A substantial and material failure to comply with the obligations in this Agreement that causes an adverse and material financial loss to the other party; or
  - ii. One that affords a material legal excuse to terminate this Agreement, including the inability to meet its financial obligations to the other party; or
  - iii. Actions or omissions constituting gross negligence or willful misconduct in the performance of the obligations in this Agreement that causes an adverse and material financial loss to the other party; or
  - iv. Habitual or recurrent failure to perform duties under the Scope of Services in this Agreement.
- E. In the event of termination, Sedgwick shall deliver to Client, or its designated recipient, all files, reports, documents, and other work performed by Sedgwick under this Agreement, whether in written or electronic form, and upon receipt thereof, Client shall pay Sedgwick, pursuant to the terms of this Agreement, for services performed and

authorized reimbursable expenses incurred to the date of termination. Sedgwick shall refund to Client all compensation previously paid to Sedgwick but unearned as of the date of termination.

**8. Property Rights:**

- A. All records relating to the operations, administration, activities, and finances of Client shall at all times be and remain the property of Client. At the termination of this Agreement, all such materials shall be returned to Client. Sedgwick may, at its sole cost and expense, make and maintain copies of any Client records (but not including confidential or privileged records such as but not limited to claims legal files) for Sedgwick's use and retention both during and after the termination of this Agreement. The copies may be made on paper, computer disk, or any other format or media deemed desirable by Sedgwick.
- B. All data, information, documents, books and records, processes (such as but not limited to experience modifications and other calculations and procedures used in reports and/or in presentations to Client by Sedgwick), equipment, software (in source and object code form), and other materials supplied or purchased by Client from vendors outside this Agreement, relating to, or for use in, the provision of the Services to Client, and all intellectual property rights therein, will be and remain the sole property of Client.

**9. Professional Advice:**

Nothing in this Agreement is intended to require Sedgwick to engage in the practice of law, and services provided shall not be considered legal, tax or accounting advice, and Sedgwick shall in no event give, or be required to give, any legal opinion or provide any legal, tax or accounting representation to Client. Client acknowledges that Sedgwick has been engaged to provide certain professional services and that it is not the intent of the parties that Sedgwick assume any insurance risk. Sedgwick shall not act as an insurer for Client, and this Agreement shall not be construed as an insurance policy; it being understood that Sedgwick is in no event financially responsible for payment or satisfaction of Client's claims, lawsuits, or any form of cause of action against Client from Sedgwick funds.

**Comment [WM1]:** Let's discuss this. One of the purposes of this language is to clarify that even though we may have JDs providing services, no attorney-client privilege attaches. If no attorney-client privilege attaches, then the client is not receiving legal services.

**10. Indemnification:**

- A. Each party shall defend, indemnify, and hold the other harmless from any claim for damages or injury allegedly caused or contributed to by a wrongful or negligent act or omission of that party arising out of the performance or nonperformance of its obligations under this Agreement, but neither party shall be obligated to defend, indemnify or hold the other harmless for any claim resulting from the sole negligence or breach of this Agreement by the other. Each party agrees to keep the other fully informed of any matter for which it is defending, holding harmless or indemnifying the other party. Each party reserves the right to appoint its own counsel, at its own expense, regarding any matter defended hereunder and to approve any settlements of same.
- B. Notwithstanding anything to the contrary contained in the above paragraph, it is understood and agreed that if Client, directly or through a subcontractor or vendor of Client's choosing ("Client Subcontractor"), retains administration of a claim or performs any services for a claim Sedgwick administers, or if Client otherwise directs the administration of a claim, Client will indemnify, defend, and hold Sedgwick, its officers, directors, employees and agents harmless from the losses, damages, costs, judgments and

expenses (including attorney's fees and costs) as a result of any litigation or proceeding, fines, penalties, revocation of license, or any other state regulatory investigation or action arising against Sedgwick related to the acts or omissions of Client or the Client Subcontractor.

C. EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS OF SEDGWICK PURSUANT TO SECTION 10.A., THE PARTIES AGREE THAT IN NO EVENT SHALL SEDGWICK BE LIABLE FOR ANY LOSS OR DAMAGE TO REVENUES, PROFITS OR GOODWILL OR OTHER SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND RESULTING FROM ITS PERFORMANCE FAILURE TO PERFORM UNDER THIS AGREEMENT OR RESULTING FROM THE FURNISHING, PERFORMANCE, USE OR LOSS OF USE OF ANY SOFTWARE, SYSTEM, SITE, OR DELIVERABLE PROVIDED TO CLIENT HEREUNDER, INCLUDING WITHOUT LIMITATION ANY INTERRUPTION OF BUSINESS, EVEN IF SEDGWICK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

D. Notwithstanding the foregoing, an indemnifying party will not settle a claim without the indemnified party's written consent, unless such settlement results in (i) a full release of all parties, (ii) no liability to the indemnified party or future obligation of the indemnified party, and (iii) no admission of wrongdoing by Client or Sedgwick.

E. The provisions of this section shall survive the expiration or termination of the Agreement.

**11. Network Security/Confidentiality:**

A. If Client's access to the data management system requires a network connection (the "Network Connection") between Client's network and Sedgwick's network, Sedgwick and Client shall take reasonable and customary precautions to prevent unauthorized access to or use of the Network Connection through their respective networks. The parties agree, however, that each party is responsible for the security of its own network. Neither party shall be liable to the other for unauthorized access to the Network Connection, so long as the accused party shall have taken reasonable and customary precautions to prevent such unauthorized access.

B. Whether or not marked as such, and without regard to the media in which such records are stored, "Confidential Information" shall mean:

- i. Any business or technical information pertaining to the parties herein or to third parties, which is furnished, disclosed or made available by one party to the other, including, without limitation, specifications, prototypes, software, marketing plans, financial data and personnel statistics; and
- ii. Medical records, reports and information, as well as any other non-medical records, reports or information pertaining to claimants under the Program.

C. Each party agrees to protect Confidential Information received hereunder with the same degree of care that such party exercises with its own confidential information (but in no event less than reasonable care) and to limit access and disclosure of Confidential Information only to their employees, agents and contractors who have a "need to know,"

and who agree to maintain confidentiality in accordance with this section. Notwithstanding the foregoing, Client agrees to permit Sedgwick to compile and disseminate aggregate, de-identified information for auditing, compliance, internal assessments, process improvement and related analytics, benchmarking purposes or forward to a data collection facility data for data handled pursuant to this Agreement, provided that such facility agrees in writing to keep Client's data confidential. Further, Sedgwick shall be entitled, without violation of this section and without the prior consent of Client, to retain pool or claims administration information and to forward pool and claims administration information to government agencies to the extent required by law for the proper performance of the services set forth herein.

D. The provisions of this section shall survive the expiration or termination of the Agreement.

**12. Notices:**

Any notice required to be given under this Agreement shall be sent by certified or registered mail, postage prepaid, to General Counsel - Americas, Sedgwick Claims Management Services, Inc., 8125 Sedgwick Way, Memphis, TN 38125, in the case of Sedgwick, and to PLAN's Acting Board Counsel, Gregory J. Rubens, Esq., Aaronson, Dickerson, Cohn and Lanzone, 1001 Laurel Street, Suite A, San Carlos, CA 94070 in the case of Client.

**Comment [WM2]:** We really need an address here.

**13. Assignment:**

Neither party may assign its rights or obligations under this Agreement without the written consent of the other party.

**14. Entire Agreement and Modification or Amendment:**

This Agreement and its attached exhibits and schedules represent the full and final understanding of the parties with respect to the subject matter described herein and supersedes any and all prior agreements or understandings, written or oral, express or implied. This Agreement may be modified or amended only by a written statement signed by both parties.

**15. Applicable Law:**

The terms and conditions of this Agreement shall be governed by the laws of the State of California without regard to conflicts of law principles. If any dispute or claim arises hereunder that the parties are not able to resolve amicably, the parties agree and stipulate that such litigation shall be resolved in the State of California, and the parties irrevocably submit to the exclusive venue and jurisdiction of such court for the purpose of any such action or proceeding. In the event of a dispute between the parties resulting in litigation, the prevailing party may, in addition to any other relief obtained, recover its court costs and reasonable attorney's fees.

**16. Force Majeure:**

Neither party shall be liable to the other party or be deemed to have breached this Agreement for any failure or delay in the performance of all or any portion of its obligations under this Agreement if such failure or delay is due to any contingency beyond its reasonable control (a "Force Majeure"). Without limiting the generality of the foregoing, such contingency includes, but is not limited to, acts of God, fires, floods, pandemics, storms, earthquakes, riots, boycotts, strikes, lock-outs, acts of terror, wars and war operations, restraints of government, power or

communication line failure or other circumstance beyond such party's reasonable control, or by reason of the bankruptcy, receivership or other insolvency proceeding of any bank or other financial institution where funds to pay losses and allocated loss adjustment expenses are held, or by reason of a judgment, ruling or order of any court or agency of competent jurisdiction or change of law or regulation subsequent to the execution of this Agreement. Both parties are obligated to provide reasonable back-up capability to avoid the potential interruptions described above. If a Force Majeure occurs, the party delayed or unable to perform shall give immediate notice to the other party.

**17. Headings:**

Headings herein are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

**18. Relationship of Parties; Expenses:**

Nothing contained in this Agreement shall be deemed to create a partnership or joint venture between the parties hereto; the only relationship among the parties shall be that of independent parties to a contract. Except as expressly provided herein, no party hereto shall have authority or shall hold itself out as having authority to act for or bind any other party hereto. Except as expressly set forth herein, each party shall bear all expenses it may incur in connection with the execution, delivery and performance of this Agreement.

**19. Waiver of Breach:**

Failure of either party hereto to require the performance by the other party hereto of any obligation under this Agreement shall not affect its right subsequently to require performance of that or any other obligation. Any waiver by any party hereto of any breach of any provision of this Agreement shall not be construed as a continuing waiver of any such provision or a waiver of any succeeding breach or modification of any other right under this Agreement.

**20. Equitable Adjustment:**

This Agreement contemplates that the standards applicable to this Agreement are those in effect on the date of this Agreement, whether such standards are set forth in statutes, regulations, rules, orders, case law or otherwise. In the event of a change in a service standard, Sedgwick shall be entitled to an equitable adjustment in its compensation if such change increases Sedgwick's cost of providing the services under this Agreement or reduces its profitability.

**21. Insurance Requirements:**

- A. Sedgwick, at its expense, shall at all times maintain in full force and effect workers' compensation insurance covering all employees of Sedgwick in an amount required by the laws of the State of California. Sedgwick hereby declares that said employees are the employees of Sedgwick and at no time shall said employees be held to be in the employ of PLAN. Sedgwick shall hold PLAN harmless against any liability which it may incur toward said employees, specifically including liability for the payment of workers' compensation benefits.
- B. Sedgwick, at its expense, shall maintain automobile liability insurance in an amount not less than \$1 million per occurrence.

**Comment [WM3]:** Robin to review

- C. Sedgwick, at its expense, shall maintain at all times general premises liability insurance with limits of \$1 million per occurrence to cover bodily injury and property damage which maybe incurred on the premises of Sedgwick's offices.
- D. Sedgwick, at its expense, shall maintain errors and omissions insurance in an amount of not less than \$2,000,000 per claim to cover Sedgwick and Sedgwick's employees who have been designated as officers of PLAN, and other staff while they are carrying out the provisions of this Agreement and otherwise acting within the course and scope of their duties to PLAN.
- E. Sedgwick, at its expense, shall maintain Fidelity/Crime coverage in an amount of no less than \$2,000,000 per occurrence.
- F. Sedgwick shall maintain Certificates of Insurance in PLAN's files evidencing the insurance coverage provided herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and date first above written.

~~Pooled~~ ~~Public~~ Liability Assurance Network  
Joint Powers Authority

Sedgwick Claims Management Services, Inc.

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_





**EXHIBIT A:  
Services**

The duties listed in this section include activities which Sedgwick staff members and subcontractors are qualified to perform for PLAN.

**I. Program Administration Services**

**A. Meeting Administration and Support**

1. Prepare and distribute to PLAN in June of each year an annual meeting calendar that identifies all key activities expected to occur at each Board of Directors meeting (e.g., March meeting: review draft actuarial report, receive semi-annual financial advisor report, review investment policy, etc.).
2. Coordinate a minimum of two annual Board of Directors meetings which includes, but is not limited to, the following tasks:
  - a) Securing meeting venue and hotel accommodations.
  - b) Preparing meeting agenda and materials, emailing no later than one week prior to Board meeting date.
  - c) Noticing meeting and distributing meeting agenda and materials in compliance with the Brown Act.
  - d) Arranging for presentations (e.g., auditor, actuary, financial advisor, etc.).
3. Coordinate meetings for Executive Committee, Claims Committee, Risk Management Committee, and Ad Hoc Committees as requested which includes, but is not limited to, the following tasks:
  - a) Securing meeting venue.
  - b) Preparing meeting agenda and materials.
  - c) Noticing meeting and distributing meeting agenda and materials in compliance with the Brown Act.
  - d) Arranging for presentations.
4. Distribute all meeting minutes within 10 business days of meeting date or at the next regularly scheduled meeting date of that Committee or Board.
5. Process travel reimbursements within 30 days of receipt.
6. Attend all Board of Directors and Committee meetings and provide professional support and advice as requested.

## B. General Administration

1. Hire, when directed by PLAN, and serve as liaison for all PLAN approved consultants (e.g., auditors, actuaries, financial advisors, coverage counsels, insurance carriers, loss control/safety, etc.).
2. Serve as PLAN's liaison to insurance brokers or other providers of risk management enterprise services. Disseminate pertinent information from same to PLAN members.
3. Serve as central clearinghouse for disseminating information to PLAN members.
4. Develop, maintain, and present to PLAN detailed job responsibilities for all account team members.
5. Assist PLAN with developing and updating policies and procedures that facilitate efficient and effective business practices.
6. Respond to PLAN member questions and requests for assistance in a timely and capable manner.
7. Attend meetings at PLAN member's request.
8. Coordinate and prepare materials for safety/loss control programs as requested by PLAN;
8. Maintain and keep current a PLAN website that, at a minimum:
  - a) Provides basic information on the PLAN's purpose and services offered, including meeting agenda, minutes, and notices.
  - b) Provides PLAN members with electronic access to all key PLAN documentation (e.g., Memorandum of Coverage, Joint Powers Agreement, Bylaws, past and current insurance policies, policies and procedures, best practices, audit reports, financial statements, etc.) and information/articles of mutual interest.
9. Serve as custodian of PLAN's official records and manage records in accordance with PLAN's records retention policy.
10. Carry out special projects as requested by PLAN, including training and oversight of PLAN best practices grant program.

## C. Financial Support

1. Provide general accounting and financial management services in accordance with generally accepted accounting principles, industry best practices, and PLAN's financial policies and procedures. Key duties include:
  - a) Processing all daily financial transactions (e.g., paying bills, recording and depositing revenue, etc.) in a timely manner, including member grant reimbursement requests per best

practice program guidelines.

- b) Reconciling all financial transactions on a quarterly basis.
- c) Preparing the annual budget, tracking status on a quarterly basis, and promptly reporting anomalies to PLAN's Treasurer and Finance Committee.
- d) Reviewing monthly investment reports from Financial Advisor, and promptly reporting anomalies to PLAN's Treasurer and Finance Committee.
- e) Assisting PLAN and its Treasurer and Finance Committee with their financial oversight responsibilities.
- f) Calculating Retrospective Plan balances for each PLAN member, monitoring balances, and distributing refunds to PLAN members in accordance with PLAN policies and procedures.
- g) Preparing a report package quarterly, for each Board of Directors meeting, that covers all financial/investment transactions that have occurred since the last meeting including:
  - (1) A listing of all checks issued (for ratification by Board of Directors).
  - (2) Report on Investments from PLAN's Financial Advisor.
  - (3) Financial Report.
  - (4) Member Account Summary Report.
  - (5) Projected Cash Flow Obligations.
- h) Working cooperatively with the auditing firm that prepares PLAN's annual financial statements to ensure the firm receives all necessary information in a timely and organized manner.
- i) Calculating PLAN member program administration charges, pool layer contributions, and excess insurance costs.
- j) Invoicing and collecting total amount due from PLAN member.
- k) Filing documentation necessary to maintain PLAN's CAJPA accreditation.
- k) Filing the annual report to the State Controller.

#### D. Investment Support

1. Assist PLAN and its Treasurer and Finance Committee with ensuring the PLAN's Financial Advisor is managing the PLAN's financial assets in accordance with PLAN's Investment Policy.

2. Carry out fund transfers as recommended by Financial Advisor and in accordance with PLAN's Investment Policy.
3. Arrange for annual presentations from Financial Advisor to PLAN.
4. Arrange for annual review of Investment Policy, update Policy as directed by PLAN, and promptly advise Financial Advisor of changes.

E. Claims Administration Support

1. Assist PLAN and its Claims Committee with ensuring the PLAN's Claims Administrator is competently fulfilling the scope of work contained in the Claims Administrator contract.
2. Work cooperatively with the PLAN and PLAN's Claims Administrator to identify and budget for losses with the potential to impact PLAN's pool layer and above.
3. Ensure that PLAN members are reimbursed within 90 business days for PLAN's share of PLAN approved settlements after Claims Administrator and Claims Committee Chair have approved payment.
4. Assist PLAN members and Claims Administrator, as necessary, with resolving settlement issues arising with insurance carriers.
5. Coordinate with the PLAN's Claims Auditor to ensure annual audits are carried out in a timely manner and in accordance with the Auditor's contract.
6. Arrange for an annual presentation from the Claims Auditor to review audit findings.
7. Draft and maintain Closed Session meeting minutes. The minutes will identify claim under discussion, describe action taken, and record vote (i.e. maker of motion and second, and members who voted in favor, who opposed, or abstained from vote). They will be secured separately to be maintained Privileged and Confidential.

F. Risk Management and Underwriting Support

1. Assist PLAN, its Board Members, and the Risk Management Committee with:
  - a) Maintaining contemporary and responsible underwriting standards and insurance requirements.
  - b) Evaluating exposures, interpreting PLAN's Memorandum of Coverage (MOC) with support from PLAN's Coverage Counsel, and proposing revisions to MOC language as necessary.
  - c) Evaluating alternative risk financing methods.
2. Collect and analyze underwriting data in accordance with PLAN's underwriting standards for cities interested in becoming a PLAN member city and prepare reports summarizing findings.

3. Collect, vet, and transmit in a timely and organized manner PLAN loss data to actuarial firm for annual actuarial report.
4. Arrange for an annual presentation from the PLAN's actuarial firm to review the actuarial report, assist PLAN with evaluating report and determining confidence levels, long-term investment yields, and PLAN member deposit levels.
5. Coordinate training for PLAN member agencies on Risk Management Best Practices, Safety, Loss Control and Risk reduction techniques, as required.

G. Strategic Planning Support

1. Annually Schedule a Board Strategic Planning Meeting.
  - a) Work with PLAN's Executive Committee to develop and facilitate an annual planning discussion with the Board of Directors that focuses on keeping PLAN an innovative, vital, and well-managed operation that:
    - (1) Proactively addresses emerging coverage issues.
    - (2) Strategically seeks out creative risk financing tools and business models to improve PLAN's performance.
    - (3) Proactively positions itself to weather economic and insurance market fluctuations.
    - (4) Strategically markets itself to cities that meet its underwriting standards.
    - (5) Regularly reviews its administrative practices, key foundational documents, policies, and procedures to ensure they remain current, relevant, and represent best practices.
  - b) Assist the Executive Committee with extracting the key themes/ideas from the planning session and preparing an annual work plan that is distributed to PLAN members and Committee Chairs for execution
  - c) Assist the Board President with monitoring Committee efforts to implement work plan.
2. Regular Board of Directors Meetings:
  - a) Provide PLAN with an overview of the coming liability and property programs' insurance renewal process, including but not limited to:
    - (1) The state of the insurance market.
    - (2) Anticipated renewal terms.
    - (3) Options for strengthening coverage.

- (4) Strategies Sedgwick and PLAN's Insurance Broker will employ to ensure PLAN receives the highest quality coverage at the best price.
- b) Incorporate feedback from PLAN at the board meetings into the upcoming renewal process.

**Agenda Item 6.A.**

**ELECTIONS**

**SUBJECT: Review of Candidates to Fill PLAN JPA Committees and Officer Positions**

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**BACKGROUND AND HISTORY:**

Annually, the Board of Directors approves the candidates for PLAN JPA's committees. Each committee must consist of no less than three members of the Board of Directors. The Executive Committee consists of nine designated members. Each committee shall designate a member to serve as chair of their committee. Attached for the Board's reference is the current list of committees and their members.

Additionally, the Board Members must appoint their Officers for the next program year. Current Officers are as follows:

- **President:** Marc Zafferano
- **Vice-President:** Rebecca Mendenhall
- **Treasurer:** Pak Lin

All current Officers have expressed willingness to continue in their respective positions. Nominations will be taken during the meeting for any member interested in serving as an Officer.

**RECOMMENDATION:**

- 1) *Staff recommends the Board of Directors select candidates to serve on PLAN JPA's Committees for Program Year 2021/22.*
- 2) *Staff recommends the Board of Directors elect members to fill the Officer positions for PLAN JPA's Program Year 2021/22.*

**REFERENCE MATERIALS ATTACHED:**

- Slate of PLAN JPA Committee and Officer List for the 2021/22 Program Year
- PLAN JPA Committee and Officer Roles and Responsibilities





## **Officer and Committee Member Listing – FY 2021/22**

**President:** Marc Zafferano

**Vice-President:** Rebecca Mendenhall

**Treasurer:** Pak Lin

**Secretary:** Jon Paulsen

### **Executive Committee**

**Marc Zafferano (President) – San Bruno**

Rebecca Mendenhall (Vice-President) – San Carlos

Pak Lin (Finance Chair/Treasurer) - Colma

Donald Larkin, (Claims Chair) – Morgan Hill

George Rodericks (Risk Management Chair) – Atherton

Robert Schultz (At Large) – Los Gatos

Mary Furey (At Large) – Saratoga

Maria Saguisag-Sid (At Large) – Foster City

Kevin Bryant (At Large) – Woodside

### **Claims Committee**

**Donald Larkin (Chair) – Morgan Hill**

Marc Zafferano – San Bruno

Ann Ritzma – Hillsborough

Robert Schultz – Los Gatos

Rebecca Mendenhall – San Carlos

Michael Guina - Burlingame

### **Risk Management Committee**

**George Rodericks (Chair) – Atherton**

Lisa Lopez – Half Moon Bay

Yulia Carter - Pacifica

Jeremy Dennis – Portola Valley

Susanne Creekmore - Tiburon

### **Finance Committee**

**Pak Lin (Chair) – Colma**

Jan Cooke – Hillsborough

Cindy Safe – Woodside



## Committee Roles and Responsibilities

*As a member governed organization, each of you play an important role in managing the affairs of the organization. The following is a brief description of each committee's role within the PLAN JPA. For more details, please refer to referenced PLAN JPA Bylaws, specifically, Article VIII – Committees.*

**Executive Committee** - A standing committee of nine members: the Chair and Vice-Chair of the Board, the Chair of each standing committee and three at large members. The Executive Committee may exercise all powers of the Board necessary to further the timely and orderly conduct of business subject to restrictions contained in the Bylaws.

**Claims Committee** - The Claims Committee is charged with the duty and responsibility of reviewing and authorizing all payment of Settlements which exceed a Member Entity's deductible and is above the authority level of the PLAN Litigation Manager. The Claims Committee, upon request by PLAN JPA or a Member Entity, may hear and make recommendation(s) on the initial appeal on all staff determinations of coverage for, and settlement of, a third party claim against a Member. The Claims Committee may also establish a Defense Counsel list.

**Risk Management Committee** - The Risk Management Committee is charged with the duty and responsibility of reviewing and making recommendations to the Board for risk management programs, including but not limited to, voluntary and mandatory program changes in Member activities, and restrictions on coverage. The Committee makes recommendations to the Board on applications for program admission, expulsion, withdrawal notices and proposals for cancellation, including but not limited to, the terms/conditions under which such admissions, withdrawals, expulsions and cancellations are implemented.

**Finance Committee** – The Finance Committee is charged with the duty and responsibility of reviewing and making recommendations to the Board on the results of PLAN's annual financial audit. This also includes reviewing and making recommendations to the Board regarding the PLAN's investments and Investment Policy. The Finance Committee reviews the PLAN Annual Administrative Fund Budget and makes recommendations to the Board. Additionally, the Finance Committee is charged with the duty and responsibility of conducting an annual review of PLAN Actuarial Report and all supplemental reports. The Committee provides recommendations to the Board with respect to Program Funding (Liability). The Committee evaluates excess insurance, reinsurance and other third party risk transfer mechanisms for compatibility with PLAN Program goals. The Committee recommends yearly Program Funding based on the Actuarial Report and PLAN Funding Policy.

*A Link to PLAN JPA's website is provided below, which contains the current Committee Meeting Schedule and the most recent Committee Meeting Agendas, Minutes, and Reports.*

<https://www.planjpa.org/>

Agenda Item 7.A.

**FINANCIAL MATTERS**

**SUBJECT: Consideration of Proposed 2021/22 Operating Budget**

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**BACKGROUND AND HISTORY:**

Enclosed is the Draft Operating Budget (Budget) for PLAN JPA for the 2021/22 fiscal year. While the funding model is similar to what PLAN has approved in the past, employment liability coverage has been added for those members who joined Employment Risk Management Authority (ERMA). Funding rates were compiled by PLAN's actuary. Pages two and three detail the Budget program as follows:

- For the Liability program, member contributions are presented at the 60% confidence level (CL) with a 2% discount factor. PLAN's self-insured retention (SIR) is up to \$2.5 million above each individual member's SIR. Reinsurance of \$2.5 million is purchased above the pool's SIR and excess coverage is purchased from \$5 million to \$30 million. These coverage layers are same as the prior year.
- For the Property program, member contributions are presented at the 70% CL with a 2% discount factor. The proposed coverage is losses pooled from members SIR up to \$500K (prior year SIR was \$225K) per occurrence with zero aggregate deductible and excess coverage purchased to \$1 Billion.

The major components of the Budget are outlined below:

**1. Overall Rates for Coverage**

The Budgeted contributions are projected to increase from \$16.2 million to \$22.0 million; an increase of 36% over the prior year. Decreases in estimated payroll of 2.3% and the primary funding layer (4.2%) for the Liability Program were offset by significant increases in reinsurance and excess premiums for both Liability and Property Programs. Below is a summary by program.

***Liability Program (Page 2)***

The Liability program is budgeted to a 31% increase in contributions over the 2020/21 Approved Budget. The underlying assumptions used in compiling the preliminary budget include:

- 1) *Payroll* - is estimated to decrease by 2.3% from the prior year due to the change in payroll reporting method. The 2021/22 estimated payroll is based upon the actual payroll collected on a quarterly basis, annualized with a conservative 3% trend increase. In prior years, the estimated payroll was collected annually.
- 2) *Primary Funding Layer* – decreased 4.2% from prior year due to favorable claims development.

Agenda Item 7.A.  
Page 2

- 3) *Insurance cost* – The insurance cost is budgeted to increase by 82% over the prior year.
  - a. *Reinsurance* is budgeted to increase by 27.5%.
  - b. *Excess* is budgeted to increase by 106.1%.
- 4) *Administrative Expenses* – Budgeted to increase of 4.4% in administration expenses. See note 5 below which outlines the estimated changes.
- 5) *Capped Contribution* – The current budget has contributions being capped at 40% change from one year to the next.

*Experience Modification (ex-mod) Factors:*

PLAN's actuary developed the ex-mod factors by using the loss experience and payroll from 2015/16 through 2019/20. The losses were limited to \$250,000 per occurrence. Creditability was given to payroll, limited to a minimum of 10% and maximum of 90%. A change has been made in current year to cap the change of ex-mod at 30% from year to year.

*Allocation of Administrative Cost:*

Administrative costs are split between fixed and variable costs. The fixed costs (33%) are allocated among the members evenly. The remaining variable costs (67%) are allocated based upon the following: a) one-third of the costs are allocated based upon reported claims greater than \$1 and b) two-thirds of the costs are allocated based upon paid losses in the period of 2015/16 to 2019/20. The allocation of administrative costs is same as it has been in the past years.

***Property Program (Page 3)***

The Property program is projected to increase 57.5% over the 2020/21 Approved Budget. The proposed budget includes:

1. Funding the 2021/22 program year at the **70% CL**, similar to prior year;
2. Increasing the Total Insured Value (TIV) by 4.3%;
3. Excess premium includes a 69.5% rate increase. The proposed rate increase includes increasing SIR to \$500K per occurrence, with no aggregate deductible. The prior year coverage included SIR at \$225K occurrence with \$1M aggregate deductible;
4. Excess Cyber liability is projected to increase 200.3%; and
5. Actuarial Report, dated on June 2, 2021, was used to compile the proposed contributions for 2021/22.

**2. Claims Expense**

The overall claims expenses for program year 2021/22 is budgeted at the expected CL and expected to decrease by 2.2%. While the Liability Program is projected to decrease 4.1% due to favorable claims development, the Property Program is projected to increase 13.5% due to proposed SIR increase to \$500K with no aggregate deductible.

**3. Insurance Expense**

Total insurance expense is budgeted to increase by 90.7% over the prior year budget. The Liability Program is budgeted to increase 96.7% as the insurance market has harden (excess carriers leaving the California market) while the Property Program is budgeted to increase 69.6% over the prior year due to utilization of the excess layer. Excess Cyber Coverage is budgeted to increase 114.5% while employment liability is estimated to increase 20% from the prior year.

**4. Risk Management Grants**

Risk Management Grants, which are being funded out of equity, is budgeted at \$500,000, similar to prior year budget.

**5. Administration Expenses**

Administrative expenses are projected to increase by 4.4%, over the prior year. The 2021/22 proposed budget includes the following line item variances from the prior year:

- Program Administration: contractual 3% increase from prior year and additional \$75K for litigation management;
- Financial Audit: contractual 4.8% increase from the prior year;
- Actuarial Studies: \$5K increase for additional studies
- Claims Admin & Audit: contractual increase for claims administration, claims audit cost budgeted for \$3K and APD claims administration cost for \$15K in 2021/22;
- Legal Counsel: budgeting an 11% decrease from prior year budget;
- Risk Console Info System: this contract was phased out;
- Insurance: budgeted 5% increase for Deadly Weapon Response, E&O and Crime coverage;
- Bank/Investment Fee: 83.3% decrease over prior budget due to reallocation of investment fees to offset investment income;
- Meetings: budgeted to increase by \$9K due to holding one strategic meeting and two board meetings offsite;
- Allowance for Contingencies: this expenditure is for unexpected PLAN JPA cost not budgeted.

Staff plans on presenting a modified budget based upon board decision on SIR's and funding decisions.

**RECOMMENDATION:**

*Staff recommends the Board of Directors approve the PLAN JPA budget for Program Year 2021/22, as presented.*

**REFERENCE MATERIALS ATTACHED:**

- 2021-22 PLAN JPA Operating Budget

# PLAN JPA

## Draft Operating Budget for 2021/2022

### Summary of Contributions by Program

Member	Liability Program	Property Program	Employment Liability	2021/22 Total Contributions	Prior Year Comparison			Payroll Comparison			Ex-mod Comparison		
					2020/21 Total Contributions	Increase/ (Decrease)	Percent Change	Estimated Payroll 2021/22	Estimated Payroll 2020/21	% Change	2021/22	2020/21	Change
	Page 2	Page 3											
American Canyon	\$ 362,385	\$ 138,359	\$ 57,576	\$ 558,320	\$ 401,150	\$ 157,171	39%	\$ 6,738,943	\$ 7,896,528	-14.7%	61%	60%	1.5%
Atherton	248,761	29,446	44,476	322,682	241,277	81,405	34%	5,103,982	5,703,129	-10.5%	130%	128%	1.9%
Benicia	774,877	424,520	-	1,199,397	980,121	219,276	22%	22,887,654	23,555,000	-2.8%	87%	96%	-9.1%
Burlingame	693,718	352,499	-	1,046,217	724,995	321,221	44%	22,895,189	25,898,071	-11.6%	82%	82%	0.1%
Campbell	814,430	177,988	-	992,418	695,409	297,008	43%	22,756,074	25,400,000	-10.4%	82%	79%	3.9%
Colma	111,796	49,247	-	161,043	150,325	10,718	7%	3,973,521	5,866,006	-32.3%	77%	72%	6.7%
Cupertino	708,593	208,226	-	916,819	639,636	277,183	43%	23,860,889	26,023,447	-8.3%	39%	49%	-21.0%
Dublin	708,417	431,486	-	1,139,903	785,019	354,884	45%	9,733,186	13,229,029	-26.4%	84%	64%	30.1%
East Palo Alto	497,809	54,732	-	552,541	386,865	165,676	43%	9,453,047	11,775,000	-19.7%	117%	90%	30.0%
Foster City	462,332	247,563	-	709,895	489,508	220,387	45%	19,827,337	20,783,000	-4.6%	31%	30%	3.0%
Half Moon Bay	219,235	56,293	-	275,528	211,682	63,846	30%	4,089,523	4,274,400	-4.3%	76%	97%	-21.6%
Hillsborough	368,132	146,488	-	514,620	361,461	153,159	42%	11,138,285	10,601,185	5.1%	91%	80%	13.9%
Los Altos Hills	232,845	31,860	-	264,705	186,939	77,766	42%	3,005,980	2,673,040	12.5%	172%	153%	12.5%
Los Gatos	587,027	119,022	-	706,049	492,623	213,426	43%	22,378,814	20,271,929	10.4%	48%	48%	0.6%
Millbrae	490,017	198,389	-	688,406	479,959	208,446	43%	7,733,077	9,676,706	-20.1%	231%	192%	20.3%
Milpitas	1,283,278	450,014	-	1,733,292	1,161,755	571,537	49%	64,362,249	49,905,258	29.0%	87%	93%	-6.2%
Morgan Hill	1,148,573	281,209	-	1,429,782	999,226	430,556	43%	29,567,808	26,206,349	12.8%	114%	119%	-4.6%
Newark	963,154	231,758	-	1,194,912	834,245	360,668	43%	21,770,775	18,956,497	14.8%	98%	117%	-16.3%
Pacifica	1,037,836	418,999	-	1,456,835	1,095,379	361,456	33%	19,531,220	21,209,531	-7.9%	151%	152%	-0.7%
Portola Valley	101,848	26,795	-	128,643	100,649	27,994	28%	1,721,873	1,861,818	-7.5%	81%	81%	-0.2%
Ross	88,186	13,328	-	101,514	92,328	9,186	10%	2,447,463	2,585,000	-5.3%	70%	70%	0.0%
San Bruno	1,275,246	193,341	-	1,468,587	1,045,101	423,486	41%	31,136,941	32,017,130	-2.7%	143%	120%	19.0%
San Carlos	976,592	112,608	-	1,089,200	874,579	214,621	25%	8,395,419	9,165,405	-8.4%	369%	300%	23.1%
Saratoga	430,308	87,399	-	517,707	360,859	156,848	43%	7,444,257	7,700,000	-3.3%	140%	200%	-30.0%
South San Francisco	1,425,911	565,059	-	1,990,970	1,752,289	238,681	14%	51,563,560	60,226,756	-14.4%	73%	104%	-29.8%
Suisun City	389,892	78,793	-	468,685	330,384	138,301	42%	7,836,131	7,584,819	3.3%	75%	64%	16.4%
Tiburon	188,307	28,048	-	216,355	152,919	63,436	41%	3,862,568	4,557,033	-15.2%	79%	68%	16.5%
Woodside	135,651	19,528	17,634	172,813	132,672	40,140	30%	2,121,729	2,317,470	-8.4%	99%	94%	5.5%
<b>Total</b>	<b>\$ 16,725,156</b>	<b>\$ 5,172,997</b>	<b>\$ 119,686</b>	<b>\$ 22,017,838</b>	<b>\$16,159,356</b>	<b>\$ 5,858,482</b>	<b>36%</b>	<b>\$ 447,337,492</b>	<b>\$ 457,919,536</b>	<b>-2.3%</b>			
P/Y Actual	13,118,305	3,284,518	\$99,738	16,502,561									
Incr./(Decr.)	\$ 3,606,851	\$ 1,888,479	\$ 19,948	\$ 5,515,277									
% Change	27%	57%	20%	33%									

#### Note:

Payroll comparison was obtained from the actuarial study. The payroll numbers are estimates that were used at the time of funding.

The ex-mod comparisons were obtained from actuarial reports.

Employment Liability coverage is through ERMA (Employment Risk Management Authority).

**PLAN JPA**  
**Draft Operating Budget for 2021/2022**  
**Liability Program Contribution Schedule**  
*Pool Funding @ 60% Confidence Level, 2.0% Discount Factor*

Members	Member SIR	Funding for Losses SIR-\$2.5 M	Reinsurance/Excess Insurance			Administration Expense	Deposit from PY 40%	Unallocated Contributions	Members capped at 40%	Uncapped Members	Allocation of Contributions	2021/22 60% CL Liability Budget	Budget Comparison	
			Reinsurance \$2.5M x \$2.5M	Excess \$25M x \$5M	Total Insurance								2020/21 60% CL Liability Budget	Percent Increase / (Decrease)
			Note 1	Note 2	Note 3			Note 5	Note 6	Note 7	Note 8	Note 9	Note 10	
American Canyon	\$25,000	\$ 72,562	\$ 44,599	\$ 163,282	\$ 207,881	\$ 56,710	\$366,250	\$ 337,153	-	\$ 337,153	\$ 362,385	\$ 362,385	\$ 261,607	38.5%
Atherton	\$25,000	117,707	\$15,049	\$55,096	70,145	43,588	262,569	231,440	-	231,440	248,761	248,761	187,549	32.6%
Benicia	\$25,000	353,533	\$58,165	\$212,948	271,113	96,277	984,238	720,923	-	720,923	774,877	774,877	703,027	10.2%
Burlingame	\$250,000	179,152	\$64,464	\$236,010	300,474	118,416	693,718	598,042	693,718	-	-	693,718	495,513	40.0%
Campbell	\$100,000	252,023	\$90,513	\$331,377	421,890	88,055	814,430	761,968	814,430	-	-	814,430	581,736	40.0%
Colma	\$50,000	48,496	\$3,701	\$13,549	17,250	38,266	164,465	104,012	-	104,012	111,796	111,796	117,475	-4.8%
Cupertino	\$250,000	87,939	\$127,458	\$466,637	594,095	47,350	708,593	729,384	708,593	-	-	708,593	506,138	40.0%
Dublin	\$50,000	129,501	\$137,353	\$502,863	640,216	44,814	708,417	814,531	708,417	-	-	708,417	506,012	40.0%
East Palo Alto	\$100,000	149,659	\$65,911	\$241,307	307,218	72,314	497,809	529,191	497,809	-	-	497,809	355,578	40.0%
Foster City	\$100,000	82,713	\$70,703	\$258,852	329,555	54,824	462,332	467,092	462,332	-	-	462,332	330,237	40.0%
Half Moon Bay	\$50,000	49,338	\$26,607	\$97,412	124,019	30,613	245,106	203,970	-	203,970	219,235	219,235	175,076	25.2%
Hillsborough	\$50,000	161,103	\$24,439	\$89,474	113,913	67,483	375,500	342,499	-	342,499	368,132	368,132	268,214	37.3%
Los Altos Hills	\$25,000	91,583	\$18,007	\$65,926	83,933	43,743	232,845	219,259	232,845	-	-	232,845	166,318	40.0%
Los Gatos	\$50,000	171,669	\$67,291	\$246,362	313,653	69,898	587,027	555,220	587,027	-	-	587,027	419,305	40.0%
Millbrae	\$100,000	240,878	\$48,869	\$178,916	227,785	76,982	490,017	545,645	490,017	-	-	490,017	350,012	40.0%
Milpitas	\$100,000	756,649	\$166,866	\$610,916	777,782	145,234	1,283,278	1,679,665	1,283,278	-	-	1,283,278	916,627	40.0%
Morgan Hill	\$100,000	452,661	\$99,429	\$364,022	463,451	197,521	1,148,573	1,113,633	1,148,573	-	-	1,148,573	820,409	40.0%
Newark	\$100,000	287,477	\$104,806	\$383,706	488,512	146,005	963,154	921,994	963,154	-	-	963,154	687,967	40.0%
Pacifica	\$50,000	468,585	\$82,043	\$300,368	382,411	114,577	1,145,635	965,573	-	965,573	1,037,836	1,037,836	818,311	26.8%
Portola Valley	\$25,000	24,598	\$9,861	\$36,101	45,962	24,196	116,190	94,756	-	94,756	101,848	101,848	82,993	22.7%
Ross	\$25,000	30,308	\$5,458	\$19,983	25,441	26,297	116,901	82,046	-	82,046	88,186	88,186	83,501	5.6%
San Bruno	\$100,000	599,660	\$97,289	\$356,186	453,475	133,317	1,293,298	1,186,452	-	1,186,452	1,275,246	1,275,246	923,784	38.0%
San Carlos	\$100,000	418,067	\$64,522	\$236,222	300,744	189,782	1,127,028	908,593	-	908,593	976,592	976,592	805,020	21.3%
Saratoga	\$25,000	184,470	\$66,416	\$243,157	309,573	50,658	430,308	544,701	430,308	-	-	430,308	307,363	40.0%
South San Francisco	\$100,000	507,568	\$145,287	\$531,912	677,199	141,860	1,941,936	1,326,627	-	1,326,627	1,425,911	1,425,911	1,387,097	2.8%
Suisun City	\$25,000	103,306	\$62,326	\$228,181	290,507	44,256	389,892	438,069	389,892	-	-	389,892	278,494	40.0%
Tiburon	\$50,000	48,569	\$20,419	\$74,758	95,177	32,766	188,307	176,512	188,307	-	-	188,307	134,505	40.0%
Woodside	\$25,000	37,224	\$12,149	\$44,478	56,627	32,355	147,322	126,206	-	126,206	135,651	135,651	105,230	28.9%
<b>Total</b>		<b>\$ 6,106,998</b>	<b>\$ 1,800,000</b>	<b>\$ 6,590,001</b>	<b>\$ 8,390,002</b>	<b>\$ 2,228,157</b>		<b>\$ 16,725,156</b>	<b>\$9,598,700</b>	<b>\$ 6,630,250</b>	<b>\$ 7,126,456</b>	<b>\$ 16,725,156</b>	<b>\$ 12,775,098</b>	<b>31%</b>
Prior Year Actual		6,375,952	1,412,000	3,197,008	4,609,008	2,133,345						13,118,305		
Incr./(Decr.)		(268,954)	388,000	3,392,993	3,780,994	94,812						3,606,851		
% Change		-4.2%	27.5%	106.1%	82.0%	4.4%						27%		

**NOTES:**

Note 1: Member Selected Self-Insured Retention  
Note 2: Adjusted funding needed for SIR to \$2,500,000 at the 60% confidence level from draft Actuarial Study dated **June 10, 2021**  
Note 3: Insurance indications provided by the Alliant, broker; allocation based upon draft actuarial study dated **June 10, 2021**  
Note 4: Administrative Expense allocation: 33% allocated to the member equally. Of the remaining 67%, one-third is allocated using reported claims and two-thirds using paid losses; these numbers were provided in the draft actuarial study.  
Note 5: Unallocated contributions: (Note 2 + Note 3 + Note 4)  
Note 6: Capping members who have more than 40% change in contributions from the prior year.  
Note 7: Members with contributions below the 40% cap.  
Note 8: Allocation of remaining contributions among uncapped members.  
Note 9: Preliminary 2021/22 Liability Contributions  
Note 10: 2020/21 Contributions paid by members.

**Funding for the Pool Layer @ 2.0%**

	20/21	21/22
Expected Undisc.	6,646,000	6,371,000
Expected Disc.	6,214,000	5,957,000
60% CL Disc.	6,377,000	6,107,000
70% CL Disc.	7,289,000	6,988,000
80% CL Disc.	8,488,000	8,149,000
90% CL Disc.	10,402,000	10,002,000



# PLAN JPA

## Draft Operating Budget for 2021/2022

### Property Program Contributions Schedule

Pool Funding @ 70% Confidence Level, 2.0% Discount Factor

Member	SIR	Insured Values		Pool Funding SIR-\$500K	Excess Prop. Premium \$500k-\$1B	Flood Premium	Excess Cyber Coverage	2021/22 Program Deposit	Budget Comparison	
		2020/21 Insured Values	2021/22 Insured Values						2020/21 Program Deposit	Percent Increase / (Decrease)
		Note 1	Note 2	Note 3	Note 4	Note 5	Note 6	Note 7	Note 8	
American Canyon	\$5,000	\$ 76,461,244	\$ 77,992,068	\$ 28,077	\$ 102,909	\$ 1,522	\$ 5,851	\$ 138,359	\$ 91,563	51.1%
Atherton	5,000	12,703,288	14,749,463	5,310	19,462	-	4,674	29,446	16,665	76.7%
Benicia	5,000	233,853,947	240,096,735	86,435	316,804	3,806	17,475	424,520	277,094	53.2%
Burlingame	5,000	193,296,459	198,240,888	71,367	261,576	2,076	17,480	352,499	229,482	53.6%
Campbell	5,000	94,003,335	95,629,138	34,427	126,181	-	17,380	177,988	113,673	56.6%
Colma	5,000	25,586,868	26,117,622	9,402	34,462	1,522	3,860	49,247	32,850	49.9%
Cupertino	5,000	109,983,742	112,253,511	40,411	148,117	1,522	18,175	208,226	133,498	56.0%
Dublin	5,000	239,075,127	251,241,889	90,447	331,510	1,522	8,006	431,486	279,007	54.7%
East Palo Alto	5,000	24,433,650	27,942,173	10,059	36,869	-	7,804	54,732	31,287	74.9%
Foster City	5,000	134,558,649	138,310,565	49,792	182,499	-	15,272	247,563	159,271	55.4%
Half Moon Bay	5,000	30,338,468	31,169,811	11,221	41,128	-	3,944	56,293	36,606	53.8%
Hillsborough	5,000	78,681,559	81,853,430	29,467	108,004	-	9,017	146,488	93,247	57.1%
Los Altos Hills	5,000	16,665,477	17,086,553	6,151	22,545	-	3,164	31,860	20,621	54.5%
Los Gatos	5,000	59,664,940	60,680,949	21,845	80,068	-	17,109	119,022	73,318	62.3%
Millbrae	5,000	110,852,894	114,215,155	41,118	150,705	-	6,566	198,389	129,947	52.7%
Milpitas	5,000	201,221,439	237,238,555	85,406	313,033	4,246	47,329	450,014	245,128	83.6%
Morgan Hill	5,000	149,486,695	153,263,394	55,175	202,229	1,522	22,283	281,209	178,817	57.3%
Newark	5,000	123,531,988	128,067,580	46,104	168,983	-	16,671	231,758	146,278	58.4%
Pacifica	5,000	228,189,713	233,716,394	84,138	308,385	11,417	15,059	418,999	277,068	51.2%
Portola Valley	5,000	14,214,880	14,620,936	5,264	19,292	-	2,239	26,795	17,656	51.8%
Ross	5,000	5,184,769	5,384,933	1,939	7,105	1,522	2,762	13,328	8,827	51.0%
San Bruno	5,000	99,554,404	101,178,656	36,424	133,504	-	23,413	193,341	121,317	59.4%
San Carlos	5,000	57,052,279	61,949,337	22,302	81,741	1,522	7,043	112,608	69,559	61.9%
Saratoga	5,000	43,288,127	47,346,919	17,045	62,474	1,522	6,358	87,399	53,496	63.4%
South San Francisco	5,000	298,480,101	306,954,786	110,504	405,022	11,417	38,116	565,059	365,192	54.7%
Suisun City	5,000	40,095,173	40,694,302	14,650	53,696	3,806	6,641	78,793	51,890	51.8%
Tiburon	5,000	13,214,792	13,543,414	4,876	17,870	1,522	3,780	28,048	18,414	52.3%
Woodside	5,000	9,854,576	10,121,584	3,644	13,355	-	2,529	19,528	12,747	53.2%
<b>Total</b>		<b>\$ 2,723,528,583</b>	<b>\$ 2,841,660,740</b>	<b>\$ 1,023,000</b>	<b>\$ 3,749,528</b>	<b>\$ 50,469</b>	<b>\$ 350,000</b>	<b>\$ 5,172,997</b>	<b>\$ 3,284,518</b>	<b>57.5%</b>
P/Y Actual		2,723,528,583		911,000	2,212,539	45,826	116,560	3,285,925		
Incr./(Decr.)		\$ 118,132,157		\$ 112,000	\$ 1,536,989	\$ 4,643	\$ 233,440	\$ 1,887,072		
% Change		4.3%		12.3%	69.5%	10.1%	200.3%	57.4%		

#### Notes:

Note 1: 2020/21 Total Insured property values obtained from Alliant.

Note 2: 2021/22 Total Insured property values as submitted by members. Updated as of 05/27/21

Note 3: Rate for PLAN pool (from actuarial report dated **June 2, 2021**) allocated using Note 2.

Note 4: Estimated Premium by Alliant Property Insurance Program (APIP).

Note 5: Flood cost are based upon 2020/21 premiums with a 10% increase in premiums.

Note 6: Excess Cyber coverage: minimum \$1K per member and remaining allocated based upon payroll.

Note 7: Total 2021/22 Contributions by member (Total Notes 3 through 6).

Note 8: 2020/21 Contributions

#### Funding for the Pooled Layer

		20/21	21/22		
Expected	Undiscounted	772,000	870,000		
Expected	Discounted	758,000	860,000		
70% confidence Level	Discounted	911,000	1,023,000	112,000	163,000
75% confidence Level	Discounted	988,000	1,103,000	115,000	243,000
80% confidence Level	Discounted	1,078,000	1,197,000	119,000	337,000
85% confidence Level	Discounted	1,191,000	1,315,000	124,000	455,000



# PLAN JPA

## Draft Operating Budget for 2021/2022

	2020/21		2021/22 Draft Operating Budget	Prior Year	
	Approved Budget	Projected Actuals		Increase/ (Decrease)	Percent Incr./ (Decr.)
<b>Revenues:</b>					
Contributions	\$ 16,059,618	\$ 16,159,356	\$ 22,017,838	\$ 5,958,220	37.1%
Funding from Equity	500,000	500,000	500,000	-	0.0%
Investment Income	-	640,000	530,000	530,000	0.0%
Less: Investment Fees	-	-	(35,000)	(35,000)	0.0%
<b>Total Revenues</b>	<b>16,559,618</b>	<b>17,299,356</b>	<b>23,012,838</b>	<b>6,453,220</b>	<b>39.0%</b>
<b>Expenses</b>					
<i>Claims Expense</i>	6,972,000	6,972,000	6,817,000	(155,000)	-2.2% <b>a</b>
<i>Insurance Expense</i>					
Insurance - Liability	4,265,804	4,609,008	8,390,002	4,124,198	96.7%
Insurance - Property	2,211,134	2,212,540	3,749,528	1,538,394	69.6%
Flood Insurance	45,826	45,826	50,469	4,643	10.1%
Excess Cyber Coverage	116,560	116,560	350,000	233,440	200.3%
Employment Liability Coverage	-	99,738	119,686	119,686	100.0%
	<b>6,639,324</b>	<b>7,083,672</b>	<b>12,659,684</b>	<b>6,020,360</b>	<b>90.7% <b>b</b></b>
<i>Risk Management Grants</i>					
Risk Management Fund	500,000	500,000	500,000	-	0.0%
<i>Administration</i>					
Program Administration	867,407	867,407	968,429	101,022	11.6%
Financial Audit	20,800	20,800	21,800	1,000	4.8%
Actuarial Studies	36,000	43,000	41,000	5,000	13.9%
Claims Admin & Audit	721,725	687,178	747,897	26,172	3.6%
Legal Counsel	44,971	35,000	40,000	(4,971)	-11.1%
Risk Console Info System	20,000	20,000	-	(20,000)	-100.0%
Risk Control Services	274,660	274,660	274,660	-	0.0%
Sewer Summit	25,000	25,000	25,000	-	0.0%
Insurance	51,782	51,782	54,371	2,589	5.0%
CAJPA Accreditation	12,000	-	12,000	-	0.0%
Bank Fees/Investment Fees	30,000	33,000	5,000	(25,000)	-83.3%
Meetings & Conferences:					
Meetings	16,000	1,000	25,000	9,000	56.3%
Training & Workshops	3,000	3,000	3,000	-	0.0%
Allowance for Contingencies	10,000	10,000	10,000	-	0.0%
	<b>2,133,345</b>	<b>2,071,827</b>	<b>2,228,157</b>	<b>94,812</b>	<b>4.4% <b>d</b></b>
<b>Total Expenses</b>	<b>16,244,669</b>	<b>16,627,499</b>	<b>22,204,841</b>	<b>5,960,172</b>	<b>36.7%</b>
<b>Budgeted Net Income (Loss)</b>	<b>314,949</b>	<b>671,857</b>	<b>807,997</b>	<b>493,048</b>	<b>156.5%</b>

### Notes:

- a** Claims expenses are recorded at expected. The breakout of expenses by programs are:

	2020/21	2021/22	Difference	% Difference
Liability	\$6,214,000	\$5,957,000	(\$257,000)	-4.1%
Property	758,000	860,000	102,000	13.5%
Total	\$6,972,000	\$6,817,000	(\$155,000)	-2.2%

- b** Insurance expenses are budgeted to increase by 90.7%. Liability premiums are budgeted to increase 96.7% due to insurance market hardening. Property rates are budgeted to increase 69.6% due to utilization of the excess layer. Cyber excess coverage is budgeted to increase 114.5% & employment liability coverage is budgeted to increase 20% for those members who are participating with ERMA.

- c** Risk Management Grants are funded from the equity. Thus, a corresponding revenues has been recorded for budgeting

- d** Administration expenses are expected to increase by 4.4% in comparison to 20/21 budget. While majority of the expenses are related to contractual increase, program administration fee has an additional cost of \$75K for litigation management. The actuarial fee increase is due additional scope of work and investment income/bank fee decrease is due to reallocation of the investment fee as part of investment income. Staff is increasing meeting fees expense in anticipation of one strategic meeting and two board meetings to be held during the year.

**GOVERNING DOCUMENTS**

**SUBJECT: Consideration of Governing Documents**

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**BACKGROUND AND HISTORY:**

It is best practice for the Board to review PLAN's governing documents annually to ensure they are up to date on language and provide any necessary clarifications to coverages. Overview of recommendations for amendment for the 2021/22 program year:

- Liability Program Memorandum of Coverage (MOC) to delete reference to Risk Coverage Agreement;
- Liability Master Program Document to include reference to payroll collection form and reporting frequency, experience modification capping methodology, and implementation of escalating contribution caps until elimination;
- Property Program MOC general updates per Coverage Counsel review; and
- Property Program Master Program Document clarifying PLAN and member deductible obligations including any proposed changes to confidence level funding or target equity.

Should the Board elect to participate in CARMA for the 2021/22 liability program year, there are several additional changes required to our current governing documents. These include:

- A resolution from PLAN authorizing the joining of CARMA;
- Acceptance of the CARMA JPA agreement; and
- Additional changes to the PLAN Liability MOC to align with the CARMA MOC (recommended to avoid coverage gaps from one to the other).

PLAN's General Manager (Jon Paulsen), Board Counsel (Greg Rubens), and Coverage Counsel (Byrne Conley) will be in attendance to highlight each of these proposed changes and answer questions from the Board.

**RECOMMENDATION:**

*Staff recommends the Board approve the proposed PLAN governing documents as presented, subject to final review and approval by PLAN Coverage Counsel and PLAN Board Counsel.*

**REFERENCE MATERIALS ATTACHED:**

- PLAN JPA 2021/22 Liability Program Memorandum of Coverage
- PLAN JPA 2021/22 Liability Master Program Document
- PLAN JPA 2021/22 Property Program Memorandum of Coverage
- PLAN JPA 2021/22 Property Master Program Document
- PLAN JPA Resolution to Join CARMA
- CARMA JPA Agreement
- Comparison of PLAN and CARMA MOCs



## MEMORANDUM OF COVERAGE – LIABILITY

Issue Date: July 1, 2021

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## MEMORANDUM OF COVERAGE -- LIABILITY

### DECLARATIONS

ENTITY COVERED: Pooled Liability Assurance Network Joint Powers Authority as  
per Endorsement No. 1

MAILING ADDRESS: 1750 Creekside Oaks Drive, Suite 200  
Sacramento, CA 95833

COVERAGE PERIOD: FROM: \_\_\_\_\_ 7/1/2021 12:01 A.M., Pacific Time  
TO: \_\_\_\_\_ 7/1/2022 12:01 A.M., Pacific Time

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LIMIT OF COVERAGE: \$5,000,000 per Occurrence less Covered Party's Retained Limit  
Listed in Endorsement No. 2. With respect to Employee Benefit Plan Administration Liability,  
the LIMIT OF COVERAGE is \$250,000 per Occurrence.

In consideration for the payment of the premium, **PLAN JPA** and the ENTITIES COVERED which are designated in ENDORSEMENT No 1 to this **Memorandum** agree as follows:

#### **SECTION I - DEFINITIONS**

Words and phrases in bold print within this **Memorandum** (including any and all endorsements hereto and forming a part hereof) have special meanings, as defined below:

- A. **PLAN JPA (“PLAN”)** means the Pooled Liability Assurance Network Joint Powers Authority.
- B. **Aircraft** means a vehicle designed for the transport of persons or property principally in the air.
- C. **Bodily Injury** means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- D. **Covered Party** means any person, entity, or other organization constituting<sup>a</sup> Covered Party under SECTION II - WHO IS A COVERED PARTY.
- E. **Coverage Period** means the COVERAGE PERIOD that is designated in the DECLARATIONS to this **Memorandum**.
- F. **Cyber Liability** means any liability arising out of or related to the acquisition, storage, security, use, misuse, disclosure, or transmission of electronic data of any kind including, but not limited to, technology errors and omissions, information security and privacy, privacy notification costs, penalties for regulatory defense or penalties, website media content, disclosure or misuse of confidential information, failure to prevent unauthorized disclosure or misuse of confidential information, improper or inadequate storage or security of personal or confidential information, unauthorized access to computer systems containing confidential information, or transmission or failure to prevent transmission of a computer virus or other damaging material.
- F. **Dam** means any artificial barrier, together with appurtenant works, which does or may impound or divert water, and which:
  - 1. Is twenty-five (25) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier to

the maximum possible water storage elevation;

2. Is twenty-five (25) feet or more in height from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum possible water storage elevation; or
3. Has an impounding capacity of fifty (50) acre-feet or

more. However, the following shall not be considered a **Dam**:

1. Any artificial barrier, together with appurtenant works, which does or may impound or divert water, but which is not in excess of six (6) feet in height, regardless of storage capacity;
2. Any artificial barrier, together with appurtenant works, which does or may impound or divert water, but which has a storage capacity not in excess of fifteen (15) acre-feet, regardless of height;
3. Any obstruction in a canal used to raise or lower water therein or divert water therefrom;
4. Any levee, including but not limited to a levee on the bed of a natural lake, the primary purpose of which levee is to control floodwaters;
5. Any railroad fill or structure;
6. Any tank constructed of steel or concrete or of a combination thereof;
7. Any tank elevated above the ground;
8. Any barrier which is not across a stream channel, watercourse or natural drainage area, and which has the principal purpose of impounding water for agricultural use; and
9. Any obstruction in the channel of a stream or watercourse which is fifteen (15) feet or less in height from the lowest elevation of the obstruction and which has the single purpose of spreading water within the bed of the stream or watercourse upstream from the construction for percolation underground.

Regardless of the language of the above definition, however, no structure specifically exempted from jurisdiction by the State of California Department of Water Resources, Division of Safety of Dams shall be considered a "Dam," unless such structure is under the jurisdiction of an agency of the federal government.

- G. **Damages** means monetary sums paid or awarded as compensation for **Bodily Injury, Property Damage, Personal Injury, Public Officials Errors and Omissions Injury, or Employee Benefit Plan Administration Liability** covered by this **Memorandum**.

**Damages** does not include:

1. Any monetary sum paid or awarded as or for restitution;
2. Any monetary sum paid or awarded as or for fees (except for plaintiff's attorneys fees if such fees are associated with a claim for compensatory Damages otherwise covered hereunder), fines, sanctions, penalties, punitive damages or exemplary damages;
3. Any monetary sum paid or awarded as or for double, treble or any other mathematical multiplier of **Damages**;
4. Any costs of complying with equitable or other injunctive relief;
5. Any monetary sum paid or awarded as or for any loss, cost or expense arising out of any:
  - a. Request, demand or order that any **Covered Party** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of **Pollutants**; or
  - b. Claim or suit by or on behalf of a government authority because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of **Pollutants**;
6. Any monetary sum paid or awarded to satisfy any obligation of a **Covered Party** (or any insurance company as a **Covered Party's** insurer) under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

7. Any premium, employer or employee contribution, fee, tax, assessment, or other amount, to enroll or maintain the enrollment of any employee in any **Employee Benefit Plan**

H. **Self Insured Retention** means the retention limits that are designated in ENDORSEMENT No 2 to this **Memorandum**.

I. **Defense Costs** means:

1. All fees (including attorney's fees), costs (including court costs), and expenses incurred in connection with the adjustment, investigation, defense and appeal of a claim or suit to which this **Memorandum** applies; and
2. Interest on any judgment or portion thereof (accruing after entry of judgment) to which this **Memorandum** applies.

However, **Defense Costs** does not include any of the following:

1. Any office expenses of **PLAN** or a **Covered Party**;
2. Any salaries of employees of **PLAN** or a **Covered Party**;
3. Any salaries of or other monetary payments (including but not limited to per diems, honorariums or reimbursements) to elected or appointed officials of **PLAN** or a **Covered Party**;
4. Any fees or expenses of any claims administrator engaged by a **Covered Party**; or
5. Any fees or expenses incurred for services of any individual or entity (including any attorney, city attorney, city engineer, or city manager) unless such services are provided pursuant to the express written consent of **PLAN**.

J. **Employee Benefit Plan Administration Liability** means liability of a **Covered Party** arising from any act, error, or omission in **Employee Benefit Plan Administration**. For purposes of this definition:

1. **Employee Benefit Plan** means only the following employee



benefit plans:

1. Educational tuition reimbursement plans
  2. Group plans for life, health, dental, disability, automobile, homeowners, or legal expense insurance
  3. Pension plans
  4. Salary Reduction plans under Internal Revenue Code Section 457, including any amendments
  5. Pre-tax medical and dependent care savings plans
  6. Social security system benefits
  7. Workers Compensation and unemployment insurance benefits
  8. California Public Employees Retirement System benefits
2. **Administration** means only the following administrative functions, with respect to an **Employee Benefit Plan**:
- a. Explaining or interpreting an **Employee Benefit Plan**
  - b. Calculating or communicating benefits and costs for an **Employee Benefit Plan**
  - c. Enrolling participants, or terminating participation, in an **Employee Benefit Plan**
  - d. Estimating or projecting future **Employee Benefit Plan** values
  - e. Handling or processing of **Employee Benefit Plan** records
3. **Employee Benefit Administration Liability** shall not include:
- a. any liability arising out of an insufficiency of funds to meet

any obligation under any **Employee Benefit Plan**.

- b. any liability arising out of act, error, or omission by any **Covered Party** to effect and maintain insurance or bonding for plan property or assets of any **Employee Benefit Plan**.
- c. any liability arising out of any representations made at any time in relation to the price or value of any security, debt, bank deposit, or similar financial instrument or investment, including, but not limited to, advice given to any person to participate in any **Employee Benefit Plan**.
- d. any liability for premiums, employer or employee contributions, fees, taxes, assessments, or other amounts, to enroll or maintain the enrollment of any employee(s) in any **Employee Benefit Plan**.

K. **Entity** means:

- 1. The ENTITY COVERED which is designated in ENDORSEMENT No 1 to this **Memorandum**; and
- 2. Any commission, agency, district, authority, board, or similar body, the governing board of which is exclusively comprised of elected or appointed officials, employees, or volunteers (whether or not compensated) of the ENTITY COVERED which is designated in ENDORSEMENT No 1 to this **Memorandum**

L. **Insurance** means insurance or coverage other than the coverage afforded by this **Memorandum**, including but not limited to the following:

- 1. Valid and collectible insurance (whether stated to be primary, pro rata, contributory, excess, contingent, or otherwise);
- 2. Any self-funding mechanism, including but not limited to a joint powers authority (whether stated to be primary, pro rata, contributory, excess, contingent, or otherwise); and
- 3. Specific self-insurance (whether stated to be primary, pro rata, contributory, excess, contingent or otherwise).

M. **Limit of Coverage** means the LIMIT OF COVERAGE that is designated in the DECLARATIONS to this **Memorandum**.

- N. **Memorandum** means this MEMORANDUM OF COVERAGE -- LIABILITY, including the DECLARATIONS and all endorsements hereto.
- O. **Nuclear Material** means source material, special nuclear material or byproduct material. "Source Material," "Special Nuclear Material" and "Byproduct Material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- P. **Occurrence** means:
1. With respect to **Bodily Injury**, an accident, including continuous or repeated exposure to substantially the same general harmful conditions, during the **Coverage Period**.
  2. With respect to **Property Damage**, an accident, including continuous or repeated exposure to substantially the same general harmful conditions, during the **Coverage Period**.
  3. With respect to **Personal Injury**, the commission of one of the offenses listed in the definition of **Personal Injury** during the **Coverage Period**. All such acts committed against any individual during the **Coverage Period** shall be deemed to be one **Occurrence**.
  4. With respect to **Public Officials Errors and Omissions Injury**, the commission of one of the acts listed in the definition of **Public Officials Errors and Omissions Injury** during the **Coverage Period**. All such acts committed against any individual during the **Coverage Period** shall be deemed to be one **Occurrence**.
  5. With respect to **Employee Benefit Plan Administration**, an act, error, or omission in the performance during the **Coverage Period** of any of the administrative functions listed in the definition of **Employee Benefit Plan Administration** with respect to an **Employee Benefit Plan**. All such acts, errors, or omissions during the **Coverage Period** with respect to any **Employee Benefit Plan** shall be deemed to be one **Occurrence**.
  6. In the event of allegations of sexual abuse, regardless of the number of alleged victims, regardless of the number of alleged acts of sexual abuse, and regardless of the number of locations where the alleged acts of sexual abuse took place, all instances of sexual abuse by the same alleged perpetrator shall be deemed to be one occurrence

taking place at the time of the first alleged act of sexual abuse.  
Coverage in effect at the time the occurrence takes place shall be the only coverage that may apply, regardless of whether other instances of sexual abuse by the same alleged perpetrator took place during other MOC periods.

Q. **Personal Injury** means economic loss, emotional distress, and consequential **Bodily Injury**, arising out of the commission of one or more of the following offenses by a **Covered Party** in the discharge of duties for the **Entity**:

1. False arrest, detention or imprisonment;
2. Malicious prosecution;
3. Oral or written publication of material that slanders or libels a person or organization, including disparaging statements concerning the condition, value, quality or use of that person's or organization's real or personal property, but only where the first publication of such material occurs during the **Coverage Period**;
4. Oral or written publication of material that violates a person's right of privacy, but only where the first publication of such material occurs during the **Coverage Period**; or
5. Discrimination or violation of civil rights;

**Personal Injury** does not include written or oral publication of material by or at the direction of any **Covered Party** with knowledge of its falsity.

R. **Pollutants** means without limitation any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes without limitation materials to be recycled, reconditioned or reclaimed. The term **Pollutants** does not include any of the following:

1. Potable water,
2. Agricultural water,
3. Water furnished to commercial users,

4. Water used for fire suppression,
5. Raw sewage,
6. Combined sewage,
7. Storm water run-off,
8. Partially treated sewage,
9. Fully treated sewage (as defined by the applicable NPDES permit),  
and
10. Residual streams of waste water

treatment. S. **Property Damage** means:

1. Physical injury to tangible property, including the loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
2. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **Occurrence** that caused it.

Money, cash equivalents, checks, bonds, and all other financial instruments shall not be considered tangible property.

T. **Public Officials Errors and Omissions Injury** means economic loss and emotional distress arising out of any act or omission, any misstatement or misleading statement, any neglect or breach of duty, or any misfeasance, malfeasance or nonfeasance, by a **Covered Party** in the discharge of duties for the **Entity**.

**Public Officials Errors and Omissions Injury** does not include **Bodily Injury, Property Damage, Personal Injury, or Employee Benefit Plan Administration Liability**.

U. Sexual abuse means any actual, attempted or alleged criminal sexual

**Deleted:** <#>**Risk Coverage Agreement** means the revised Liability Risk Coverage Agreement dated as of July 1, 1992 among **ABAG**, the **ENTITY COVERED** which is designated in the **DECLARATIONS**, and all other participants in the **ABAG Pooled Liability Assurance Network (PLAN)** program.¶

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conduct of a person, or persons acting in concert, regardless if criminal charges or proceedings are brought, which causes physical and/or mental injuries. Sexual abuse also includes actual, attempted or alleged: sexual molestation, sexual assault, sexual exploitation or sexual injury. Any or all acts of sexual abuse shall be deemed to constitute intentional conduct by the alleged perpetrator done with willful and conscious disregard of the rights or safety of others, or with malice, or conduct that is malicious, oppressive or in reckless disregard of the claimant's or plaintiff's rights, and no coverage shall be provided in any event for the alleged perpetrator.

- X. **Unmanned Aerial Vehicle** means an aircraft, aerial system, or aerial device that is not designed, manufactured, or modified after manufacture to be controlled directly by a person from within or on the aircraft aerial system or device.
- Y. **Watercraft** means any form of vessel, including but not limited to barge, boat, ship, yacht, canoe, kayak, and jet ski or similar personal recreational watercraft, intended for use in or on water.

## **SECTION II - WHO IS A COVERED PARTY**

- A. Subject to the terms of provision B. below, each of the following constitutes a **Covered Party** under this **Memorandum**:
  - 1. The **Entity**,
  - 2. Any person who was or is now an elected or appointed official, employee or volunteer of the **Entity**, whether or not compensated, but only while acting for or on behalf of the **Entity** (including while acting on outside boards at the direction of the **Entity**), and
  - 3. Any person or organization to whom or to which the **Entity** is obligated by virtue of a written contract to provide coverage such as is afforded by this **Memorandum**, but only with respect to:
    - a. Operations performed by the **Entity**, or
    - b. Operations performed by such person or organization on behalf of the **Entity**, or
    - c. Property (including vehicles and facilities) owned by the **Entity**

and used by such person or organization, or

- d. Property (including vehicles and facilities) owned by such person or organization and used by the **Entity**.
- B. None of the above shall constitute a **Covered Party** with respect to any claim or suit brought by or on behalf of any **Entity**.
- C. Notwithstanding section A above, the defense and indemnity coverage afforded by this **Memorandum** to a past or present official, employee or volunteer of an **Entity** is not broader than the **Entity's** duty to defend and indemnify its official, employee or volunteer pursuant to California Government Code sections 815 to 815.3, 825 to 825.6, and 995 to 996.6, inclusive and any amendments thereof. If the **Entity** that employs the official, employee or volunteer is not obligated under the Government Code to provide a defense, or to provide indemnity, for a claim, or if said **Entity** refuses to provide such defense and/or indemnity to said official, employee or volunteer, then this **Memorandum** shall not provide for any such defense or indemnity coverage to said official, employee or volunteer. All immunities, defenses, rights and privileges afforded to an **Entity** under Government Code sections 815 to 815.3, 825 to 825.6, and 995 to 996.6, inclusive and any amendments thereof, shall be afforded to **PLAN** to bar any defense or indemnity coverage under this agreement to that **Entity's** official, employee or volunteer.
- D. No person or entity is a **Covered Party** with respect to the conduct of any current or past partnership, joint venture or joint powers authority unless all members are **Covered Parties** under (a) or (b) herein. However, for any person (1) who is an official, employee, or volunteer of an **Entity** covered by A herein, (2) who participates in the activities of any partnership, joint venture or joint powers authority (or any separate agency or entity created under any joint powers agreement by the **Entity**), and (3) who is acting for or on behalf of an **Entity** covered by A herein at the time of the occurrence, then coverage is afforded by this agreement. Such coverage will be in excess of and shall not contribute with any collectible insurance or other coverage provided to the other joint powers authority, agency or entity.
- E. With respect to any automobile owned or leased by the **Entity**, or loaned to or hired for use by or on behalf of the **Entity**, any person while using such automobile, and any person or organization legally responsible for the use thereof, provided the actual use is with the express permission of the **Entity**, but this protection does not apply to: 1) Any person or organization, or any agent or employee thereof, operating an automobile

sales agency, outside repair shop, service station, storage garage or public parking place, with respect to an occurrence arising out of the operation thereof; or 2) The owner or any lessee, other than the **Entity**, of any automobile hired by or loaned to the **Covered Party** or to any agent or employee of such owner or lessee. This agreement does not provide uninsured or underinsured motorist coverage.

### **SECTION III - COVERAGES**

Subject to the terms and conditions of this **Memorandum**, **PLAN** agrees to pay on behalf of the **Covered Party**, and this **Memorandum** applies only to, **Damages** that the **Covered Party** becomes legally obligated to pay because of

A. **Bodily Injury**,

B. **Property**

**Damage**, C. **Personal**

**Injury**,

D. **Public Officials Errors and Omissions Injury**,

or E. **Employee Benefit Plan Administration Liability**

caused by an **Occurrence**, and which are not excluded.

If the **Covered Party** has **Insurance** which affords coverage for any **Bodily Injury**, **Property Damage**, **Personal Injury**, **Public Officials Errors and Omissions Injury** or **Employee Benefit Plan Administration Liability** covered by this **Memorandum**, this **Memorandum** shall only apply in excess of any amounts payable under such **Insurance**.

The amount that **PLAN** will pay is limited as described under SECTION V - LIMIT OF COVERAGE.

### **SECTION IV - EXCLUSIONS**

This **Memorandum** does not apply to **Damages**:

A. For **Bodily Injury**, **Property Damage**, **Personal Injury**, **Public Officials Errors and Omissions Injury**, or **Employee Benefit Plan Administration Liability** which is either expected or intended from the standpoint of a



**Covered Party**; but this exclusion does not apply to **Bodily Injury** resulting from assault and battery committed by, at the direction of, or with the consent of the Entity, for the purpose of protecting persons or property from injury or death.

- B. Arising out of the actual, alleged, or threatened, exposure to, or discharge, dispersal, seepage, migration, release or escape of, **Pollutants**:
1. At or from any premises, site, or location which is or was at any time owned or occupied by, or loaned, rented, or leased to, any **Covered Party**;
  2. At or from any premises, site, or location which is or was at any time used for the handling, storage, disposal, processing, or treatment of waste;
  3. Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any **Covered Party** or any person or organization for whom a **Covered Party** may be legally responsible; or
  4. At or from any premises, site, or location on which any **Covered Party** or any contractor or subcontractor working directly or indirectly on any **Covered Party's** behalf is performing operations.
  5. Arising out of, or related to, compliance with environmental statutes including but not limited to the Clean Air Act and Clean Water Act.
- C. Arising out of the ownership, management, governance, use, or operation of any hospital or airport.
- D. Arising out of medical professional services performed by or on behalf of a **Covered Party**; but this exclusion does not apply to such services performed by emergency medical technicians, paramedics and other similar classes of personnel.
- E. Arising out of any partial or complete structural failure of any **Dam**.
- F. Arising out of any hazardous properties of **Nuclear Material**.
- G. For **Property Damage Injury, Personal Injury** or **Public Officials Errors and Omissions Injury** arising out of:

1. Any action or inaction affecting the use of, or rights or entitlements in, any real property or improvements to real property;
  2. Any action or inaction on any data collecting, analysis, study, finding, policy, ordinance, statute, code, law, regulation or program that directly or indirectly affects the use of, or rights or entitlements in, any real property or improvements to real property; and
  3. Any announcement or publication concerning the circumstances described in subparts a and b.
- H. For an inverse condemnation claim arising solely out of the non-negligent operation of any public improvement, however acquired; provided, that such circumstances shall not include the reverse flow of sewage, water and/or other contents through a sanitary sewer system and out of an inlet of such a system.
- I. For **Public Officials Errors and Omissions Injury** arising out of noncompliance with, or violation of, any statute, regulation, rule, Executive Order, circular, audit or recordkeeping standard, permit, license, administrative ruling, or the like. This exclusion applies regardless of the means taken, or available to, enforce a remedy for the noncompliance or violation.
- J. Arising out of a **Covered Party's** ownership, operation, use, maintenance, or entrustment to others of any **Aircraft** or **Watercraft**.
- This exclusion does not apply to claims arising out of the operation, ownership, maintenance or use or entrustment to others of any **Unmanned Aerial Vehicle** owned or operated by or rented to or loaned by or on behalf of any **Covered Party** if operated in accordance with all applicable federal, state, and local laws, rules and regulations, including but not limited to Federal Aviation Administration (FAA) rules and regulations detailed in part 107 of Title 14 of the Code of Federal Regulations.
- K. Arising out of any transit authority, transit system or public transportation system owned or operated by a **Covered Party**; but this exclusion does not apply to any transit system operating over non-fixed routes, including dial-a-ride, senior citizen transportation or handicapped transportation.
- L. Claims arising out of the failure to supply or provide an adequate supply of gas, water, electricity, storm drainage or sewage capacity when such failure is a result of the inadequacy of the **Entity's** facilities to supply or produce

sufficient gas, water, electricity, storm drainage or sewage capacity to meet the demand. This exclusion does not apply if the failure to supply results from direct and immediate accidental damage to tangible property owned or used by any **Covered Party** to procure, produce, process or transmit the gas, water, electricity, storm drainage or sewage.

- M. Arising out of any obligation to pay compensation or benefits (or other monetary sums) under workers' compensation, disability benefits or unemployment compensation law or any similar law.
- N. For **Bodily Injury, Property Damage, Personal Injury, or Public Officials Errors and Omissions Injury** to:
1. An employee, volunteer, elected or appointed official of a **Covered Party** arising out of and in the course of:
    - a. Employment by a **Covered Party**; or
    - b. Performing duties related to the conduct of a **Covered Party's** activities;
- or
2. The spouse or partner, child, parent, brother, sister or other relative of that employee, volunteer, elected or appointed official, as a consequence of paragraph (1) above.
- This exclusion applies:
- a. Whether the **Covered Party** may be liable as an employer or in any other capacity; and who must pay, any amount because of the injury.
- O. Arising out of any:
1. Refusal to employ, elect, or appoint any person, or to allow any person to participate as a volunteer
  2. Termination of any person's employment or volunteer participation, or termination of any person's position as an elected or appointed official

3. Practice, policy, act or omission which is in any way related (whether logically or causally) to employment, to serving as an elected or appointed official, or to serving as a volunteer, all including but not limited to any of the following: coercion, demotion, promotion, evaluation, reassignment, discipline, defamation, violation of civil rights, harassment, humiliation or discrimination.

This exclusion applies:

- a. Whether the **Covered Party** may be liable as an employer or in any other capacity; and
- b. To any obligation to share payment with, or repay someone else who must pay, any amount because of the injury.

P. For claims by any **Covered Party**. This exclusion shall not apply to claims for

**Employee Benefits Administration**

**Liability.** Q. For **Property Damage** to:

1. Property owned by the **Entity**;
2. Property rented to or leased to the **Entity**; or
3. **Aircraft** or **Watercraft** in a **Covered Party's** care, custody or

control. R. Arising out of the willful violation of a penal statute or penal ordinance:

1. Committed by a **Covered Party**; or
2. Committed with the knowledge or consent of a **Covered Party**.

S. **Public Officials Errors and Omissions Injury** arising out of the imposition, collection, refund, or refusal to refund, of taxes, fees or assessments.

T. **Public Officials Errors and Omissions Injury** arising out of:

1. Any **Covered Party** obtaining remuneration or financial gain to which the **Covered Party** was not legally entitled, or

2. Any **Covered Party's** liability for any other **Covered Party** obtaining remuneration or financial gain to which such **Covered Party** was not legally entitled.
- U. **Public Officials Errors and Omissions Injury** arising out of any bidding or contracting process if such **Public Officials Errors and Omissions Injury** is due to:
1. Estimates of probable costs or cost estimates being exceeded,
  2. Preparation of bid specifications or plans, including architectural plans, or
  3. Failure to award any contract in accordance with any statute or ordinance.
  4. Mechanic's lien claims, stop notice claims, change order claims, site differential claims, or similar claims by contractors for the value of services or materials provided; this exclusion extends to such claims however denominated, including claims of breach of oral or written contract, third-party beneficiary claims, *quantum meruit* claims, and/or open account claims.
- V. **Public Officials Errors and Omissions Injury** arising out of any failure to perform or breach of a contractual obligation.
- W. Arising out of the purchase, sale, offer of sale, solicitation, depreciation, or decline in price or value, of any security, debt, bank deposit or financial interest or instrument. This exclusion shall not apply to economic loss suffered by a governmental entity other than a **Covered Party**, as a result of **Public Officials Errors and Omissions Injury** to which this **Memorandum** applies, arising out of financial investment services undertaken by an **Entity** for compensation on behalf of that governmental entity.
- X. The actual or threatened "sexual abuse" or molestation or licentious, immoral or sexual behavior whether or not intended to lead to, or culminating in any sexual act, of any person, whether caused by, or at the instigation of, or at the direction of, or omission by, any **Entity's** employee, or any other person.

Charges or allegations against an **Entity** of negligent hiring, employment,

investigation, supervision, reporting to the proper authorities, or failure to so report are not excluded.

- Y. Fines, penalties, multipliers, or enhanced compensatory, exemplary or punitive damages. This exclusion, however, does not apply to the original compensatory damages prior to the application of a multiplier or other enhancement.
- Z. Based upon, arising out of, or attributable to any actual or alleged **Cyber Liability**.

#### **SECTION V - DEFENSE AND SETTLEMENT**

##### **A. Defense Of Claims Or Suits.**

1. **PLAN** shall have the right and duty to defend any claim or suit against a **Covered Party** seeking **Damages** to which this **Memorandum** applies, even if any allegations are groundless, false or fraudulent. In the event this **Memorandum** is excess over any **Insurance** with respect to a claim or suit, then **PLAN** shall not have any duty to defend such claim or suit until the available limits of liability of all such **Insurance** are exhausted and the defense obligation under all such **Insurance** has terminated.
2. The **Covered Party** may select counsel to represent its interests, subject to approval of counsel by **PLAN**.
3. The **Covered Party** shall:
  - a. Cooperate with **PLAN** in the investigation, defense and settlement of any claim or suit,
  - b. Upon the request of **PLAN**, attend hearings and trials, assist in securing and giving evidence, and assist in obtaining the attendance of witnesses, and
  - c. Upon the request of **PLAN**, authorize **PLAN** to obtain records and other information.
4. In the event a **Covered Party** elects not to appeal a judgment, **PLAN** may elect to do so if it pays the fees and costs of that appeal.

5. The **Covered Party** must disclose to **PLAN** all information concerning the claim or suit (including but not limited to all facts giving rise to the claim or suit) which may assist in the defense of the claim or suit. The **Covered Party** is required to provide such information even if the information may relate to or affect matters pertaining to coverage under this **Memorandum**. The **Covered Party** shall instruct its defense counsel to disclose all such information to **PLAN**, and hereby waives any and all privileges (including but not limited to the attorney/client privilege and the attorney work product privilege) to the extent necessary to allow for the disclosure of that information to **PLAN**. Any such waiver of a privilege shall extend only to **PLAN**, and shall not be construed to allow for the disclosure of any such information to any claimant.
6. It is understood and agreed that the purpose of this provision is to ensure that **PLAN** is provided with all information which is or may be useful in defending the claim or suit, in whole or part, notwithstanding the existence of any coverage limitation or dispute.

**B. Settlement Of Claims Or Suits.**

1. **PLAN** shall not have any obligation to pay any sum on behalf of a **Covered Party** under the terms of a settlement of any claim or suit, unless such settlement is finalized in a written agreement signed by the **Covered Party**, the claimant and **PLAN**.
2. No **Covered Party** shall have the right to enter into a settlement of any claim or suit, which seeks **Damages** to which this **Memorandum** applies without the express written consent of **PLAN**.

**SECTION VI - LIMIT OF COVERAGE**

**A. Limit Of Coverage - Per Occurrence.**

1. The **Limit of Coverage**, and the rule set forth under paragraph 2 below, fix the most that **PLAN** will pay with respect to an **Occurrence**, regardless of:
  - a. The number of **Covered Parties**,
  - b. The number of claims made or suits brought,

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- c. The number of persons or organizations making claims or bringing suits,
  - d. The number of persons or organizations who sustain injury or damage,
  - e. The nature and types of injuries or damage sustained,
  - f. The number of coverages under this **Memorandum** which may be applicable to the **Occurrence**.
2. All Defense Costs shall be paid and applied first against, and shall reduce, the Limit of Coverage. The difference between the Limit of Coverage and the total amount of Defense Costs shall be the amount available, if any, to pay on behalf of all Covered Parties with respect to an Occurrence.
  3. For the purpose of determining the limit of coverage and the retained limit, all damages arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence. In the event of allegations of sexual abuse, regardless of the number of alleged victims, regardless of the number of alleged acts of sexual abuse, and regardless of the number of locations where the alleged acts of sexual abuse took place, all instances of sexual abuse by the same alleged perpetrator shall be deemed to be one occurrence taking place at the time the first alleged act of sexual abuse. Coverage in effect at the time the occurrence takes place shall be the only coverage that may apply, regardless of whether other instances of sexual abuse by the same alleged perpetrator took place during other MOC periods.

**B. Self-Insured Retention (“SIR”) - Per Occurrence.**

1. The amount of the **SIR** is the amount that the **Entity** must pay (or cause to be paid) before **PLAN** is obligated to pay any amount under the terms of this **Memorandum**.
2. The **Entity** shall be obligated to pay one **SIR** with respect to all claims and suits relating to an **Occurrence**.
3. The **Deductible** is the sole responsibility of the **Entity**. **PLAN** shall not be responsible for payment of the **SIR** or any part thereof.



**C. PLAN's Obligations Upon Exhaustion Of Limit Of Coverage.**

1. **PLAN's** duties under this **Memorandum** end with respect to any **Occurrence** when **PLAN** has used up the **Limit of Coverage** by payments with respect to claims and suits relating to or arising out of that **Occurrence** (including payment of **Defense Costs**). In that event:
  - a. **PLAN** shall not have any further obligation to pay **Defense Costs** and shall have the right to withdraw from the further investigation and defense of any and all claims and suits relating to such **Occurrence**,
  - b. **PLAN** shall not have any further obligation to pay any judgment or settlement, and
  - c. **PLAN** shall not have any other obligation under this **Memorandum**.

**SECTION VII - CONDITIONS**

**A. Duties In The Event Of Occurrence, Claim Or Suit.**

1. In the event of an **Occurrence**, the **Entity** must provide to **PLAN** (or any of its authorized agents), as soon as practicable, written notice of the **Occurrence**, which includes the following information:
  - a. The identity of each **Covered Party** involved in the **Occurrence**,
  - b. How, when and where the **Occurrence** took place, c. The names and addresses of any injured persons,
  - d. The names and addresses of any witnesses,
  - e. The nature and location of any injury or damage arising out of the **Occurrence**, and
  - f. Any and all other information which is available and reasonably obtainable pertaining to the **Occurrence**.

2. If a claim is made or suit is brought against any **Covered Party**, the **Entity** must:
  - a. Immediately provide **PLAN** with written notice of the claim or suit,
  - b. Immediately make a record of the specifics of the claim or suit, and
  - c. Immediately forward to **PLAN** a copy of all documents related to the claim or suit, including but not limited to all correspondence, demands, notices, summonses and pleadings.
3. Upon the request of **PLAN**, each **Covered Party** involved in the **Occurrence** shall assist **PLAN** in the enforcement of any right (including but not limited to any right of contribution or indemnity) against any person or organization which may be liable to a **Covered Party** because of actual or alleged damages to which this **Memorandum** may also apply.
4. No **Covered Party** shall, except at its own cost, make a payment, assume any obligation or incur any expense (including but not limited to any attorney fees) without the prior express consent of **PLAN**. In the event a **Covered Party** makes any payment, assumes any obligation or incurs any expense (including but not limited to any attorney fees) without the prior express consent of **PLAN**, then any such payment, obligation or expense shall be the sole responsibility of that **Covered Party**.

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**B. Bankruptcy.**

Bankruptcy or insolvency of the **Covered Party** shall not relieve **PLAN** of any of its obligations under this **Memorandum**.

**C. Insurance.**

1. This **Memorandum** shall be in excess of the amount of any **Insurance** available to pay any sum otherwise covered under this **Memorandum**, except with respect to any such **Insurance** which is written only as specific excess insurance over the **Limit of Coverage**.

2. Regardless of the duration of any Occurrence and the number of other Memorandums between **PLAN** and the Entity, under no circumstances shall this **Memorandum** and any other memorandum of coverage between **PLAN** and an **Entity** both apply to a claim or suit. In the event of a dispute as to whether:

- a. This **Memorandum**, or
- b. Another memorandum of coverage between **PLAN** and an **Entity**

is applicable to a claim or suit, such dispute shall be resolved by application of the following rule. The first memorandum of coverage (between **PLAN** and the **Entity**) issued by **PLAN** shall be deemed the memorandum of coverage which is applicable (and only that memorandum of coverage shall be applicable). A “*continuous trigger*” rule or similar rule shall not apply.

**D. Cancellation.**

This **Memorandum** may be canceled at any time in accordance with the provisions of **the Liability Program Master Program Document**.

**E. Legal Action Against PLAN.**

1. No person or organization may join **PLAN** as a party, or otherwise bring **PLAN** into a suit seeking damages from a **Covered Party**.
2. A person or organization may sue **PLAN** to recover on an agreed settlement (meaning a settlement and release of liability signed by **PLAN**, the **Covered Party** and the claimant or the claimant's legal representative) or on a final judgment against a **Covered Party** obtained after an actual trial; but **PLAN** will not be liable for damages that are not payable under the terms of this **Memorandum** or that are in excess of the **Limit of Coverage**.

3. No **Covered Party** may pursue any claim or file any action against **PLAN** unless and until it has fully complied with the procedures established by **PLAN** for presentation and resolution of disputes, including but not limited to the **Liability Program Master Program Document**.

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F. **Transfer Of Rights Of Recovery Against Others To PLAN.**

1. If the **Covered Party** has rights to recover all or part of any payment **PLAN** has made under this Memorandum, those rights are transferred to **PLAN**. The **Covered Party** must do nothing after an **Occurrence** to impair them. At **PLAN**'s request, the **Covered Party** will bring suit or transfer those rights to **PLAN** and help enforce them. All amounts so recovered shall be paid to **PLAN**.
2. In the event any amounts recovered exceed the costs incurred to recover them plus the amount of **PLAN**'s payments, then those additional amounts shall be apportioned as follows:
  - a. The **Covered Party** shall first be reimbursed in an amount up to any payments it made, and
  - b. The remainder shall be paid to **PLAN** and the **Covered Party** in proportion to the ratio of their respective recoveries

G. **Premium.**

1. The **Entity** is authorized to act on behalf of all **Covered Parties** with respect to all matters pertaining to premium.

POOLED LIABILITY ASSURANCE NETWORK  
JOINT POWERS AUTHORITY

MEMORANDUM OF COVERAGE

ENDORSEMENT NO. 1

This ENDORSEMENT, effective 12:01 a.m. 7/1/21, forms part of a Memorandum No. PLAN 2021-GL.

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It is understood that the named Covered Party of the Declaration is completed as follows:

Pooled Liability Assurance Network,

City of American Canyon  
Town of Atherton  
City of Benicia  
City of Burlingame  
City of Campbell  
Town of Colma  
City of Cupertino  
City of Dublin  
City of East Palo Alto  
City of Foster City  
City of Half Moon Bay  
City of Hillsborough  
City of Los Altos Hills  
Town of Los Gatos  
City of Millbrae  
City of Milpitas  
City of Morgan Hill  
City of Newark  
City of Pacifica  
Town of Portola Valley  
Town of Ross  
City of San Bruno  
City of San Carlos  
City of Saratoga  
City of South San Francisco  
City of Suisun City  
Town of Tiburon  
Town of Woodside

POOLED LIABILITY ASSURANCE NETWORK  
JOINT POWERS AUTHORITY

MEMORANDUM OF COVERAGE

ENDORSEMENT NO. 2

This ENDORSEMENT, effective 12:01 a.m. 7/1/21, forms part of Memorandum No. PLAN 2021-GL.

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It is understood the Retained Limits for the named Covered Parties listed in ENDORSEMENT NO. 1 are as follows:

City of American Canyon	\$25,000
Town of Atherton	\$25,000
City of Benicia	\$25,000
City of Burlingame	\$250,000
City of Campbell	\$100,000
Town of Colma	\$50,000
City of Cupertino	\$250,000
City of Dublin	\$50,000
City of East Palo Alto	\$100,000
City of Foster City	\$100,000
City of Half Moon Bay	\$50,000
City of Hillsborough	\$50,000
City of Los Altos Hills	\$25,000
Town of Los Gatos	\$50,000
City of Millbrae	\$100,000
City of Milpitas	\$100,000
City of Morgan Hill	\$100,000
City of Newark	\$100,000
City of Pacifica	\$50,000
Town of Portola Valley	\$25,000
Town of Ross	\$25,000
City of San Bruno	\$100,000
City of San Carlos	\$100,000
City of Saratoga	\$25,000
City of South San Francisco	\$100,000
City of Suisun City	\$25,000
Town of Tiburon	\$50,000
Town of Woodside	\$25,000

POOLED LIABILITY ASSURANCE NETWORK JOINT POWERS AUTHORITY (PLAN)

MASTER PROGRAM DOCUMENT (MPD)  
FOR THE  
POOLED LIABILITY PROGRAM (PLP)

ARTICLE I: DEFINITIONS

The following definitions apply to this MPD:

1. **Administrator** shall mean the person responsible for the daily administration, management, and operation of the **Authority's** programs as defined in the Bylaws.
2. **Authority** shall mean the Pooled Liability Assurance Network Joint Powers Authority (PLAN).
3. **Board** shall mean the Board of Directors of the PLAN.
4. **Deposit Premium** shall mean that amount to be paid by each **Participant** for each **program year** as determined by the **Board** in accordance with Article III, Section C of this MPD.
5. **Joint Powers Agreement** shall mean the agreement made by and among the public entities listed in Appendix A (**Member Entities**) of the **Joint Powers Agreement**, hereafter referred to as **Agreement**.
6. **Loss Experience** shall mean such amounts as are paid by the **Participant** or the **Authority** in settlement of claims, or in satisfaction of awards or judgments for liabilities imposed by law for **bodily injury, property damage, personal injury, public officials errors and omissions, sudden and accidental pollution**, as those terms are defined in the PLP Memorandum of Coverage (MOC) and to which that MOC applies.
7. **Limit of Coverage** shall mean the amount of coverage stated in the Declarations or certificate of coverage, or sublimits as stated therein or in the MOC for each **Participant** or **covered party per occurrence**, subject to any lower sublimit stated in the MOC.
8. **Participant** shall mean a **Member Entity**, which shall mean a signatory to the **Agreement** establishing the Pooled Liability Assurance Network Joint Powers Authority, who has elected to participate in the PLP.
9. **Program Year** shall mean that period of time commencing at 12:01 a.m. on July 1 and ending at 12:00 a.m. on the following July 1.
10. **Retained Limit** shall mean the amount stated on the applicable Declarations or certificate of coverage, which will be paid by the **Participant** before the **Authority** is obligated to make

any payment from the pooled funds.

11. **Self-Insured Retention (SIR)** shall mean the **Authority's limit of coverage** above **Participant's retained limits** and up to the attachment point for excess coverage.
12. **Third Party Administrator (TPA)** shall mean the claims administrator for the **Authority** for the PLP.

## ARTICLE II: GENERAL

### A. AUTHORITY

1. The Pooled Liability Program (PLP) Master Program Document (MPD) is one of the **Authority's** governing documents. However, any conflict between the PLP MPD, the **Authority's Agreement**, the Bylaws, or the PLP MOC shall be determined in favor of the **Agreement**, the Bylaws, or the MOC, in that order.
2. The PLP MPD is intended to be the primary source of information, contain the rules and regulations, and serve as the operational guide for the conduct of the PLP.
3. The PLP has been organized under authority granted by, and shall be conducted in accordance with, the laws of the State of California.

### B. PURPOSE

The primary purpose in establishing a PLP is to create a method for providing coverage for legal exposures incurred by the **Participants** and the **Authority** as provided in the MOC and, if applicable, the excess coverage.

### C. PARTICIPATION

Any **Member Entity** may participate in the PLP. However, the terms and conditions which may be imposed on a **Participant** which desires to join the PLP may be different, depending upon payroll, number of employees, the size of the entity, its loss record, and other pertinent information.

### D. GOVERNANCE

Each **Participant's** appointed primary representative and one alternate representative shall be the representative for the PLP. The **Participant** will be entitled to one vote on all issues or decisions that involve the PLP, except that in the event of a coverage dispute, the representatives from the involved Participant shall be recused from the final deliberation and vote.



E. GOALS AND OBJECTIVES

1. The PLP shall provide liability coverage for the **Participants** utilizing an optimum mix of risk retention and risk transfer. The PLP shall provide various **retained limits** for the **Participants**, provide a risk sharing pool for losses above individual **retained limits** up to the **Authority's ~~Self-Insured-Retention (SIR)~~Limit of Liability**, and obtain excess coverage for the amount of the loss which exceeds the **Authority's ~~SIR~~Limit of Liability for the risk sharing pool**. Additionally, the PLP shall provide for the sharing of operating costs and payment of the excess coverage by charging all **Participants** their share of such costs.
2. Although the PLP is provided to the **Participants** under those terms and conditions which prevail at the time the **Participant** joins the PLP, the **Board** shall have the right to alter, from time to time, the terms and conditions of the excess coverage and the pooled underlying coverage in response to the needs and abilities of the PLP and the **Participants**, as well as in response to availability of coverage from outside sources.
3. The **Authority** offers participation in a risk sharing pool, covering losses of **Participants** in accordance with the MOC adopted by the **Participants**. The assets of the pooled program shall be maintained at all times as the assets of the **Participants** collectively. The assets may be disbursed only pursuant to the provisions of this MPD, and no **Participant** shall have an individual right to exercise control over said assets.
4. The PLP will provide coverage under the terms and conditions set forth in the MOC. The amount of coverage to be pooled and/or purchased is at the discretion of the **Board**.

ARTICLE III: PROGRAM ELEMENTS

A. PROGRAM YEARS

1. Each **program year** shall be accounted for separately. The income and expenses of each **program year** shall be accounted for separately from any other **program year's** income or expenses.
2. A **program year** shall not be closed until at least ten years of age if, at such time the **Board** authorizes closure, being convinced that all known claims for the year are closed and the probability of further claims being discovered is minimal. Any closed years, however, may be reopened if deemed necessary and approved by the **Board**.

## B. RETAINED LIMITS

1. The PLP shall annually establish the **limit of coverage** for the pool. The underlying coverage of the PLP shall provide **Participants retained limits** of various amounts per occurrence. The **Participants** may annually select their **retained limits** from the options offered. The amount of each loss, including expenses, which is less than the **retained limit** chosen by the applicable **Participant**, shall be paid by the **Participant**.
2. A **Participant** may ~~only alter~~increase its **retained limit** at the inception of a **program year** upon thirty (30) days' advance written notice, or may reduce its retained limit upon approval by the Board. The **Board**, with a two-thirds vote, and by providing 60 days' advance written notice to the **Participant**, may require a **Participant** at the inception of the **program year** to take a **retained limit** different than the **Participant's retained limit** in the expiring **program year**.
3. The amount of each loss, including expenses, which is less than the **retained limit** chosen by the applicable **Participant**, shall be paid by the **Participant**. Those amounts of each loss that are less than the **retained limit** chosen by the applicable **Participant** may be paid on behalf of the **Participant**, from the pay-as-you-go reserve fund. If a **Participant** directly pays any claim within its **retained limit**, such **Participant** shall report all payments to the **Authority** to ensure better claims control and actuarial analysis.

## C. DEPOSIT PREMIUMS

1. The **Administrator**, in conjunction with an actuary, shall establish rates and **deposit premiums**, subject to **Board** approval, adequate to fund the actuarially determined losses in the pooled layer of the PLP at the appropriate Board-determined confidence level, including estimated attorney fees and other claims related costs, the cost of excess coverage, and the projected administrative costs, including retirement of debt, if any, of the PLP.
2. The annual **deposit premium** for each **Participant** shall be calculated by applying the **Participant's** estimated annual payroll to 1) the funding level as determined by the actuary and recommended by the **Administrator**, adjusted for individual **Participant's loss experience**, relative risk and **Participant retained limit** and/or the cost of any purchased primary insurance or reinsurance, and 2) the cost of any excess coverage, and 3) a charge for the administrative and claims servicing expenses of the PLP as determined by the Administrator and approved by the Board. The cost of purchased excess coverage shall be passed through to each Participant based upon population, without consideration of payroll or experience modification, and included in the deposit premium. After the end of the **program year**, adjustments from estimated to actual payroll may be made. Debit adjustments shall be billed to the **Participant**, and credit adjustments will apply to the next year's billings. An

annual audit of a **Participant's** payroll may be conducted by the Authority.

3. The administrative expenses charged to each **Participant** shall be calculated as follows: Thirty three percent of the amount calculated is allocated equally to each **Participant**. Of the remaining sixty seven percent, one-third is calculated based upon outstanding reported claims greater than \$1 (i.e. excluding claims closed without payment) and two-thirds is calculated based upon paid losses from past five years;
4. The change in deposit premiums from year to year will be capped at thirty percent.

D. EXPERIENCE MODIFICATION

1. Each **Participant** shall be evaluated each year for an experience modification adjustment that shall be applied to the **deposit premium**.
2. The calculation of the adjustment shall include the actual **loss experience** of the individual **Participant** as it relates to the average **loss experience** of the group as a whole. Such **loss experience** shall not consider loss years that are more than five years old. The losses shall be valued as of December 31. For example, when calculating ex-mod for 18/19, loss data from July 1, 2012 through June 30, 2017, valued at December 31, 2017 would be considered. The criterion that shall be used is the relationship of actual average **loss experience** over the period being rated as it relates to the average payroll for the same period. Losses considered for loss experience calculation shall be capped at \$250,000 per Occurrence. A credibility factor will be applied, such that the Experience Modification will be balanced against annual payroll, with 90% loss weighting applied to the highest payroll Participant and 20% applied to the smallest payroll Participant and all other Participants subject to a sliding scale weighting based upon he Participant's payroll in relation to the high and low payroll figures. The change in experience modification from year to year shall be capped at thirty (30) percent.

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E. DIVIDEND AND ASSESSMENTS

1. DIVIDENDS
  - (a). At the end of each **fiscal year**, a dividend calculation shall be performed for all open **program years**. Each year thereafter there shall be an additional dividend calculation made until such time as the **program year** is closed. Any dividends available to be declared and returned to the **Participants** will be at the discretion of the **Board** provided that the total dividend to be distributed from all qualifying **program years** shall not reduce the total equity for all **program years** below a discounted 90% confidence level.
  - (b). Calculation
    - i. Dividends may not be declared from a **program year** until five years after the end of that **program year**.

- ii. Dividends may be declared only at such time as the PLP has equity, with liabilities actuarially stated discounted at a 90% confidence level. The calculated amount shall represent the maximum dividend available to be declared.

- iii. The dividend shall be reduced if any of the five succeeding ~~years~~**program years** (after the five years eligible for dividend calculation) have negative equity, ~~with liabilities actuarially stated at a discounted 90% confidence level~~in which case the Board will transfer equity between **program years** as it deems necessary pursuant to Section 2.(b) below, to re-establish an appropriate level of funding for the **program year(s)** with negative equity.
- iv. Dividends may only be declared if the equity at the expected confidence level is five times the Self Insured Retention.

## 2. ASSESSMENTS

- (a). Assessments may be levied on the **Participants** for the risk sharing layer of any **program year(s)**, as approved by the **Board**, at such time as an actuary finds that the assets of the PLP, ~~as a whole~~held for those **program year(s)**, do not meet the expected discounted losses of the PLP. Each **Participant's** share of the assessment shall be allocated based upon the **deposit premiums** collected for the self- insured layer of each respective **program year** being assessed. If such assessment is not sufficient to relieve the pool of its actuarially determined deficit in the year of the assessment, such assessment shall be levied each subsequent year until the actuarially determined deficit is relieved. The timing of payment shall be determined by the **Board** at the time of assessment.
- (b). Equity from the risk sharing layer may be exchanged between eligible **program years** if sufficient funds are available. The transfer of equity will be performed so that the individual **Participant's** share of equity is separately applied so as to maintain the integrity of each **Participant's** balance.

## F. EXCESS COVERAGE

1. The **Board** shall ensure that each **program year** is provided with excess liability coverage for the **Participants**. It is the intent and purpose of the **Authority** to continue to provide such coverage to the **Participants**, provided that such coverage can be obtained and is not unreasonably priced. This coverage may be obtained from an insurance company, by participating in another pool established under the Government Code as a joint powers authority, or offered through another PLP pooling procedure. If the coverage is purchased from an insurance company, such insurance company shall have an A.M. Best Rating Classification of A or better and an A.M. Best Financial Rating of VII or better or their equivalents.
2. Premiums for such coverage shall be paid by the PLP from the proceeds received as **deposit premiums** from the **Participants**.

3. The **Board** may, from time to time, alter excess coverage based on insurance market conditions, available alternatives, costs, and other factors. The **Board** shall place excess coverage with the two competing objectives of security and minimizing costs to the PLP as a whole.

G. PAY-AS-YOU-GO RESERVE FUND FOR PAYMENT OF CLAIMS

1. ESTABLISHMENT OF FUND

- (a). PLAN shall pay all losses from \$1 and then charge the members back monthly for the amounts within their Retained Limit.

2. ACCOUNTING AND REPLENISHMENT OF FUND

- (a). Payments from the fund shall be initiated by sending a check requisition form to the **Third Party Administrator**. Upon receipt, the **Third Party Administrator** shall execute payment and charge the payment to the requesting **Participant's** account.
  - (b). Each month, a register of payments made on behalf of each **Participant** shall be sent to the **Participant** for whom payments were made from the fund. Accompanying the register will be an invoice for the amounts needed to replenish the fund to its original amount. The **Participants** shall have thirty (30) days from the date of said invoice to make repayments to the fund.

#### ARTICLE IV: ADMINISTRATION

##### A. BOARD

1. Discussion of developments and performance of the PLP may occur as part of any scheduled **Board** meeting.
2. The **Board** shall have the responsibility and authority to carry out and perform all functions and make all decisions affecting the PLP, consistent with the powers of the **Authority** and not in conflict with the **Agreement**, the Bylaws, or the MOC.

##### B. EXECUTIVE COMMITTEE

1. The Executive Committee shall have the responsibility and authority to carry out and perform all other functions and make all other decisions affecting the PLP, provided that such functions and decision are consistent with the powers of the **Authority** and are not in conflict with the **Agreement**, the Bylaws, or the MOC.
2. The Executive Committee shall meet at least twice a year to review the developments and performance of this PLP. The Executive Committee shall review, study, advise, make recommendations to the **Board**, or take any action which the Committee believes to be in the best interests of the PLP and its **Participants**, provided that such action is not prohibited by law or is not an action reserved unto the **Board**.

##### C. ADMINISTRATOR

The **Administrator** shall be responsible for:

1. The overall operation of the PLP;
2. Monitoring the status of the PLP and its operations, the development of losses, the program's administrative and operational costs, service companies' performance, and brokers' performance;
3. Assisting the **Board** in selecting brokers, actuaries, auditors, and other service companies;
4. Promoting the programs to prospective new participants;
5. Preparing, distributing, and maintaining all records of the PLP, including its MPD and MOC as these may be amended from time to time; and
6. Preparing Certificates of Coverage and Waivers of Subrogation as may be required by the **Participants** in the PLP.



#### D. DUTIES OF THE LITIGATION MANAGER

The Litigation Manager shall:

1. Control and oversee the administration and management of all general liability claims including those in litigation and shall have the authority to settle any claim as set forth herein, subject to the provisions of Article V.C; or to reserve rights or deny coverage for a claim, subject to the **Participant's** right to appeal such coverage determinations;
2. Perform a monthly review of claims files including the new claims that are likely to exceed fifty percent (50%) of the **retained limit** of the involved **Participant** as well as those claims for which a **Participant** or the **Board** has requested a specific review;
3. Review, at least quarterly, all open claims in excess of the involved **Participant's retained limit** and, if necessary, recommend action to be taken on such claims;
4. Report to the **Board** or Executive Committee at each meeting summarizing the active claims that are of general interest to **Participants**, claims for which a **Participant** or the **Board** or Executive Committee has specifically requested a review, and also review monthly claims reports and report to the **Board** or Executive Committee any significant trends that may be developing;
5. Monitor the reporting of formal tort claims and any action to be taken as recommended by the Liability Claims Procedures Manual;
6. Assist the **Participants** in training their personnel on the statutory government tort claims filing process, including the legal effect of taking (or not taking) certain actions on the formal claim;
7. Advise, where needed, on the setting and changing of reserves for all liability claims;
8. Report to any excess insurance, reinsurance company, or excess pool, all claims that meet the reporting requirements of such excess insurance, reinsurance company, or excess pool, or that will likely exceed the Authority's **retained limit**;
9. Provide guidance to the **Third Party Administrator** on the management of complex or "problem" claims;
10. Review the performance of the **Third Party Administrator**;
11. Advise and assist the **Administrator** in the selection of a **Third Party Administrator**;
12. Recommend the amount of money to be paid on particular claims for settlement;

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13. Answer inquiries from **Participants** regarding liability claims or procedures;
14. Establish, monitor and continually update a panel of outside defense attorneys and law firms who have demonstrated proficiency in defending liability actions against public agencies, including a list of attorneys who have demonstrated special expertise in certain areas of litigation;
15. Assist the **Participant** and the **Third Party Administrator** in the selection of the appropriate defense attorney and/or law firm, for claims within the **Participant's retained limit**;
16. Assist in the selection of defense counsel for each claim where the ultimate net loss, as defined in the MOC, is at least fifty percent (50%) of the involved **Participant's retained limit**;
17. Advise, where needed, on the selection of defense counsel in claims where litigation is anticipated but not yet filed;
18. Have the authority to approve or deny the assignment of any claim, whether or not in litigation, to any law firm where the **Participant's** in-house or contract city or town attorney has been or is presently employed, or any law firm which has any form of contractual relationship with the **Participant**;
19. Continually monitor and evaluate the effectiveness of the panel defense firms and the overall management of the litigated claims, including, but not limited to, requiring the subject defense firm and/or individual defense attorney to submit their total legal billings on any one file for an independent legal bill audit as more fully outlined in the current Litigation Management Program Resolution; and
19. Provide other services as may reasonably be requested by the **Board**, Executive Committee, or a **Participant**.

## ARTICLE V: CLAIMS ADMINISTRATION

### A. CLAIMS PROCEDURES MANUAL

1. A Liability Claims Procedures Manual (Manual) including reporting procedures, forms, and other pertinent information shall be adopted by the **Board** and provided to all **Participants**.
2. All **Participants** shall follow the procedures stated in the Manual, as well as any changes thereto.

B. CLAIMS AUDIT

1. At least once every two years, the adequacy of claims adjusting for both the **Authority** and the **Participants** shall be examined by an independent auditor who specializes in claims auditing.
2. The Executive Committee shall approve the claims auditor. The costs of such claims audit shall be paid by the **Authority**.
3. The claims audit report shall address the issues of both adequacy of claims procedures and accuracy of claims data. The report shall be filed with the **Authority** and sent to each **Participant**.

C. CLAIM SETTLEMENT AUTHORITY

1. Each **Participant** shall have settlement authority for all claims, including attorney fees and other costs, which do not exceed 100% of the **Participant's retained limit**. The Litigation Manager will review these claims from time to time and may offer a recommendation to the **Participant's Third Party Administrator** and the **Participant** regarding settlement. This provision does not apply to claims for bodily injury or personal injury with bodily injury component for Medicare eligible or beneficiary claimants; **Participants** shall immediately notify the Litigation Manager once a claimant has been identified as Medicare eligible or a Medicare beneficiary.
2. The Litigation Manager shall have the authority to settle any claim with an ultimate net loss equal to or less than two hundred thousand dollars (\$200,000) in excess of the **retained limit** of the **Participant**.
3. The Claims Committee shall have the authority to settle any claim with an ultimate net loss equal to or less than the ~~Self-Insured Retention~~Limit of Liability for the risk sharing pool layer, combined with any reinsurance retention of the **Authority**. However, such authority shall only apply to those claims where the ultimate net loss, as defined in the PLP MOC, is in excess of the settlement authority given to the Litigation Manager and above the **retained limit** of the **Participant** involved.
4. The **Board** retains unto itself the authority to approve settlement of all other claims. However, the Claims Committee shall periodically review such claims and may make recommendations to the Board.

D. DISPUTES REGARDING MANAGEMENT OF A CLAIM

1. Any matter in dispute between a **Participant** and the **Third Party Administrator** shall be called to the attention of the **Administrator** and heard by the Executive Committee whose decision may be appealed to the **Board** within thirty (30) days of the Committee's decision. If no appeal is filed, the decision of the Executive

Committee shall be final.

2. When an appeal has been filed, the **Board** shall meet ~~within thirty (30) days~~ to hear the appeal. The decision of the **Board** will be final.
3. Where the Litigation Manager has the right to, and does, select legal counsel, the **Participant** for which such counsel was selected may appeal the selection to the Executive Committee. The decision of the Executive Committee shall be binding and final with no further right of appeal to the **Board**.

#### ARTICLE VI: PARTICIPATION

##### A. ELIGIBILITY AND APPLICATION

###### 1. ELIGIBILITY

- (a). A new applicant must commit to at least three full **program years** of participation in this PLP.
- (b). Any **Member Entity** may apply to participate in the PLP by providing an adopted resolution of its governing body and such other information/materials as may be required. The applicant's resolution shall commit the applicant to three full **program years** of participation in the PLP, if accepted, and consent to be governed for liability coverage in accordance with the MPD, the MOC and other documents and policies adopted by the **Board**. The resolution may also state the **retained limit** desired by the applicant.
- (c). The application for participation shall be submitted at least thirty (30) days prior to the date of the last **Board** meeting of the **program year** to ensure the **Board** has adequate time to review and evaluate the acceptability of the applicant. It is recommended that an applicant only enter the PLP at the commencement of a new **program year**. If an applicant chooses to enter the PLP at any other time, the **deposit premium** for the remainder of the **program year** will be pro-rated. The new **Participant** will begin coverage on the date that is mutually acceptable to the new **Participant** and the **Board**; however, the new **Participant** will be required to share losses with the other **Participants** of the PLP for the entire **program year**.

###### 2. APPROVAL OF APPLICATION

The **Board** shall, after reviewing the resolution and other underwriting criteria, determine the acceptability of the exposures presented by the applicant and shall advise the applicant in writing of its decision to accept or reject the request within 10 days after the decision has been made.

B. PARTICIPANTS' DUTIES

1. The **Participants** shall provide payroll, using the State DE-69 form, and all other requested information in conformance with the policies adopted by the **Board**.
2. The **Participants** shall disclose activities not usual and customary in their operation.
3. The **Participants** shall at all times cooperate with the **Authority's Administrator**, Litigation Manager, **Third Party Administrator**, and loss control personnel, in regards to underwriting activities of the **Authority**.
4. Each year the **Authority** shall bill **Participants** for a liability **deposit premium** for the next **program year**. The billings shall be due and payable in accordance with the Bylaws.
5. Billings may be made to **Participants** for a **program year** found to be actuarially unsound. All billings for payments to bring a **program year** into an actuarially sound condition are due and payable upon receipt.
6. Former **Participants** in the PLP shall be required to pay all applicable billings for the **program years** in which they participated. Delinquent billings, together with penalties and interest, shall be charged and collected from the **Participant** in accordance with the Bylaws.
7. Penalties and interest shall be charged against any amounts delinquent in accordance with the Bylaws.

C. TERMINATION

1. VOLUNTARY TERMINATION
  - (a). A **Participant** shall not be permitted to withdraw from the PLP prior to the end of its commitment period of three full **program years**, and shall be obligated for payment of premiums for these three years.
  - (b). A **Participant** which has maintained its participation in the PLP for three full **program years** may terminate its participation if, at least six months before the next **program year**, a written request to terminate participation is received from the **Participant**.
  - (c). Any **Participant** seeking to terminate its participation without proper and timely notice shall be responsible for the full cost of the next **program year's** premium. The notice will be deemed effective for the **program year** following the year in which the additional premium is paid.

## 2. INVOLUNTARY TERMINATION

- (a) The **Board** may initiate termination of a **Participant** from the PLP for the following reasons:
- (i) Termination as a **Member Entity** of the **Authority**;
  - (ii) Declination to cover the **Participant** by the entity providing excess coverage;
  - (iii) Nonpayment of premiums, assessments, or other charges;
  - (iv) Frequent late payment of premiums, assessments, and/or other charges, subject to interest and penalty charges;
  - (v) Failure to timely provide requested underwriting information;
  - (vi) Consistent poor loss history relative to the pool;
  - (vii) Substantial change in exposures which are not acceptable in this PLP; and/or
  - (viii) Financial impairment that is likely to jeopardize this PLP's ability to collect amounts due in the future.

The Board's determination of the existence of any of these conditions shall be final.

- (b) The **Board** shall have the authority, upon a two-thirds approval, to authorize a termination notice be sent to a **Participant**. Such notice shall be sent at least 60 days prior to the effective date of termination.

## 3. CONTINUED LIABILITY UPON TERMINATION

Termination of participation, whether voluntary or involuntary, in future **program years** does not relieve the terminated **Participant** of any benefits or obligations of those **program years** in which it participated. These obligations include payment of assessments, retrospective adjustments, or any other amounts due and payable.

## ARTICLE VII: TERMINATION AND DISSOLUTION OF THE PLP

The PLP may be terminated and dissolved any time by a vote of two-thirds of the **Participants**. However, the PLP shall continue to exist for the purpose of disposing of all claims, distributing assets, and all other functions necessary to conclude the affairs of the PLP.

Upon termination of the PLP, all assets of the PLP shall be distributed only among the **Participants**, including any of those which previously withdrew pursuant to Article VI, in accordance with and proportionate to their **deposit premiums** and assessments paid during the term of participation. The **Board** shall determine such distribution within six months after the last pending claim or loss covered by the PLP has been finally resolved and there is a reasonable expectation that no new claims will be filed.

#### ARTICLE VIII: AMENDMENTS

This MPD may be amended by a two-thirds (2/3rds) vote of the **Participants** present and voting at the meeting, provided prior written notice, as provided within the **Agreement**, has been given to the **Board**.

POOLED LIABILITY ASSURANCE NETWORK JOINT POWERS AUTHORITY

MASTER PROGRAM DOCUMENT  
FOR THE  
POOLED LIABILITY PROGRAM

Draft for July 1, 2018



POOLED LIABILITY ASSURANCE NETWORK JOINT POWERS AUTHORITY

MASTER PROGRAM DOCUMENT  
FOR THE  
POOLED LIABILITY PROGRAM

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## Appendix A

City of American Canyon  
Town of Atherton  
City of Benicia  
City of Burlingame  
City of Campbell  
Town of Colma  
City of Cupertino  
City of Dublin  
City of East Palo Alto  
City of Foster City  
City of Half Moon Bay  
Town of Hillsborough  
Town of Los Altos Hills  
Town of Tiburon

Town of Los Gatos  
City of Millbrae  
City of Milpitas  
City of Morgan Hill  
City of Newark  
City of Pacifica  
Town of Portola Valley  
Town of Ross  
City of San Bruno  
City of San Carlos  
City of Saratoga  
City of South San Francisco  
City of Suisun City  
Town of Woodside

**POOLED LIABILITY ASSURANCE NETWORK JPA**

**PROPERTY MEMORANDUM OF COVERAGE**

**PROGRAM YEAR: 2021-2022**

**DECLARATIONS**

1. Coverage Provider

Pooled Liability Assurance Network (“PLAN”), a joint powers authority, as now or may be hereafter constituted.

2. Members

As per the “Schedule of Covered Members”

3. PLAN Mailing Address

Care of: Sedgwick  
1750 Creekside Oaks Drive, Suite 200  
Sacramento, CA 95833

4. Coverage Period

July 1, 2021 to July 1, 2022, beginning and ending at 12:01 AM standard time.

5. Territory

This Memorandum of Coverage applies while the property is within the United States, Canada, or Puerto Rico, and in due course of transit including airborne or waterborne between points and places therein, except that

coverage does not apply to (1) waterborne shipments via the Panama Canal, (2) waterborne or airborne shipments to and from Alaska, to and from Hawaii, and to and from Puerto Rico. Coverage on export shipments not insured under ocean marine policies does not extend beyond the time when the property is loaded on board overseas vessel or aircraft; coverage on import shipments not insured under ocean marine policies does not attach until after discharge from overseas vessel or aircraft.

6. Limits of Liability

In no event shall liability for loss under this Memorandum of Coverage arising out of one “occurrence” (see APIP form Section IV(AF)) from all contributing coverages exceed \$500,000.

7. Self-Insured Retention

From each adjusted loss or claim for damage granted under this Memorandum of Coverage and occurring from any one loss, disaster or casualty, the following applicable amount(s) shall be deducted: per individual member’s deductibles on file, per occurrence, as specified on **Schedule of Covered Members**, below.

## **SCHEDULE OF COVERED MEMBERS**

The following are included as Members:

List Property Program Members – and Self Insured Retention(s) if different

## **SECTION I GENERAL CONDITIONS**

### **1. Coverage Agreement**

PLAN, a joint powers authority comprised of California public agencies, in return for the payment of premiums as they become due, in reliance upon the statements in the declarations made a part hereof and subject to all the terms and conditions of this Memorandum of Coverage, the Joint Powers Agreement, Bylaws, and Master Plan Document, agrees to provide first party, pooled self -insurance coverage to the member agencies against all risk of direct physical loss or damage to the property covered from external cause except as excluded herein.

Coverage is provided according to terms, conditions, definitions and exclusions contained in the version of the APIP USA Master Policy Wording also referred to as Alliant Property Insurance Program (“APIP”) applicable to the Coverage Period, which is incorporated by reference (hereinafter referred to as “the APIP form”). Should any term in this Memorandum of Coverage conflict with the APIP form, the language in this Memorandum of Coverage will prevail. The APIP form is updated periodically, and the form number changes with each revision.

Coverage includes Sections II, III, IV, V, VI, VII, VIII and IX of the APIP form, subject to the conditions, definitions and exclusions in the APIP form.

Specific Perils and Coverages with a lower deductible in the APIP form than the individual member’s deductible herein shall be covered by APIP, and this Memorandum will not apply to such losses. Specific Perils and Coverages with a deductible of \$500,000 or higher in the APIP form shall not be covered by this Memorandum.

### **2. Limits of Liability**

This Memorandum of Coverage may contain sublimits applicable to specific locations, or specific coverages or specific causes of loss. Such limits shall be the total payable as a result of a single occurrence (or an annual aggregate of certain occurrences where so specified) and neither the Memorandum of Coverage limit nor any sublimits shall be increased by the application of one or more APIP sublimits.

3. Losses Excluded

This Memorandum of Coverage does not cover loss or damage excluded under the terms of the APIP form.

This Memorandum of Coverage does not cover loss or damage due to flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not.

4. Assignment

Assignment of interest under this Memorandum of Coverage shall not bind PLAN until its consent is endorsed hereon.

5. Loss Clause

Except with respect to any aggregate limits of liability in this Memorandum of Coverage, any loss hereunder shall not reduce the limit.

6. Other Insurance

PLAN shall not be liable for loss if, at the time of loss there is any other insurance that would attach if this coverage had not been in effect, except that this coverage shall apply only as excess and in no event as contributing coverage, and then only after all other insurance has been exhausted.

7. Excess Insurance

Permission is granted to the member agency to have excess insurance over the limit(s) of liability set forth in this Memorandum of Coverage without prejudice to this Memorandum of Coverage and the existence of such insurance, if any, shall not reduce any liability under this Memorandum of Coverage.

8. Underlying Insurance

Permission is granted to the member agency to purchase insurance on all or any part of the deductible and against all or any of the perils covered by this Memorandum of Coverage. The existence of such underlying insurance shall not prejudice or affect any recovery otherwise payable under this Memorandum of Coverage. If the limits of such underlying insurance exceed the deductible amount that would apply in the event of loss under this Memorandum of Coverage, then that portion which exceeds such a deductible amount shall be considered "other insurance."

9. Inspection and Examination

PLAN shall be permitted, but not obligated, to inspect the member's property and operations. Neither the right to make inspections, nor the making thereof, nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the member or others, to determine or warrant that such property or operations are safe.

PLAN shall be permitted to inspect the premises and to examine and audit the member's books and records at any time during the coverage period and an extension thereof and within three years after the final termination of the Memorandum of Coverage to verify the amount of recoveries of accounts receivable, valuable papers and records on which PLAN has made any settlement or any other subject matter related to this coverage.

10. Protection of Property

In case of actual or imminent danger of loss or damage, the member shall take all necessary steps to preserve and protect property from any further damage. Expense necessarily incurred for such preservation or protection shall be borne equally by the member and PLAN, but any payment by PLAN shall not be an additional amount of coverage and shall be subject to the deductible.

11. Notice of Loss

The member shall immediately notify PLAN by written notice of any occurrence, the cost of which is likely to result in payment by PLAN under this Memorandum of Coverage.

12. Abandonment

There can be no abandonment of any property to PLAN.

13. Conformance

The terms of this Memorandum of Coverage that conflict with the applicable statutes of the state wherein this Memorandum of Coverage applies, are hereby amended to conform to such statutes.

14. Subrogation

In the event of any payment under this Memorandum of Coverage, PLAN shall be subrogated to all the member's rights of recovery therefor against any person or organization, and the member shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The member shall do nothing after loss to prejudice such rights.



#### 15.APIP USA

Coverage is not provided by PLAN above the level of \$500,000 per occurrence for any loss, and any such coverage above \$500,000 is subject to the terms and conditions of the excess policy provided by APIP form. To the extent that any loss exceeds \$500,000, if the loss is subject to a sublimit in the APIP form, that sublimit will apply to the loss even if the sublimit is not referred to in this Memorandum.

POOLED LIABILITY ASSURANCE NETWORK JOINT POWERS  
AUTHORITY

MASTER PROGRAM DOCUMENT  
FOR THE  
POOLED PROPERTY PROGRAM

POOLED LIABILITY ASSURANCE NETWORK JOINT POWERS AUTHORITY

MASTER PROGRAM DOCUMENT  
FOR THE  
POOLED LIABILITY PROGRAM

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POOLED LIABILITY ASSURANCE NETWORK JOINT POWERS AUTHORITY  
(PLAN JPA)

MASTER PROGRAM DOCUMENT (MPD)  
FOR THE  
POOLED PROPERTY PROGRAM (PPP)

ARTICLE I: DEFINITIONS

The following definitions apply to this MPD:

1. **Administrator** shall mean the person responsible for the daily administration, management, and operation of the **Authority's** programs as defined in the Bylaws.
2. **Authority** shall mean the Pooled Liability Assurance Network Joint Powers Authority (PLAN JPA).
3. **Board** shall mean the Board of Directors of the PLAN JPA.
4. **Deductible** shall mean the amount stated on the applicable Declarations or certificate of coverage, which will be paid by the **Participant** before the **Authority** is obligated to make any payment from the pooled funds.
5. **Deposit Premium** shall mean that amount to be paid by each **Participant** for each **program year** as determined by the **Board** in accordance with Article III, Section C of this MPD.
6. **Joint Powers Agreement** shall mean the agreement made by and among the public entities listed in Appendix A (**Member Entities**) of the **Joint Powers Agreement**, hereafter referred to as **Agreement**.
7. **Limit of Coverage** shall mean the amount of coverage stated in the Declarations or certificate of coverage, or sublimits as stated therein or in the Memorandum of Coverage (MOC) for each **Participant** or **covered party per occurrence**, subject to any lower sublimit stated in the MOC.
8. **Participant** shall mean a **Member Entity**, which shall mean a signatory to the **Agreement** establishing the PLAN JPA, who has elected to participate in the PPP.
9. **Program Year** shall mean that period of time commencing at 12:01 a.m. on July 1 and ending at 12:00 a.m. on the following July 1.
10. **Retained Limit** shall mean the amount stated on the applicable Declarations or certificate of coverage, which will be paid by the **Participant** before the **Authority** is obligated to make any payment from the pooled funds.

11. **Self-Insured Retention (SIR)** shall mean the **Authority's limit of coverage** above **Participant's retained limits** and up to the attachment point for excess coverage.
12. **Third Party Administrator (TPA)** shall mean the claims administrator for the **Authority** for the PPP.

## ARTICLE II: GENERAL

### A. AUTHORITY

1. The Pooled Property Program (PPP) Master Program Document (MPD) is one of the **Authority's** governing documents. However, any conflict between the PPP MPD, the **Authority's Agreement**, the Bylaws, or the PPP MOC shall be determined in favor of the **Agreement**, the Bylaws, or the MOC, in that order.
2. The PPP MPD is intended to be the primary source of information, contain the rules and regulations, and serve as the operational guide for the conduct of the PPP.
3. The PPP has been organized under authority granted by, and shall be conducted in accordance with, the laws of the State of California.

### B. PURPOSE

The primary purpose in establishing a PPP is to create a method for providing coverage for protection against damage to the **Participants** real and personal property, including mobile equipment as provided in the MOC.

### C. RESPONSIBILITY

1. The **Board** shall have the responsibility for establishing policies and remaining informed as to the financial strength and viability of the PPP. The **Board** has the authority, within the parameters of the **Agreement** and Bylaws of the **Authority** and this MPD, to act as needed to maintain and develop the financial strength of the PPP. The **Board** shall have the authority to enter into insurance contracts for the insurance coverages within the budgeted costs of such insurance.
2. The Executive Committee shall have the responsibility and authority to affect the general policies established by the **Board**.
3. The **Administrator** shall have the responsibility to manage the daily activities of the PPP and shall be given the authority to implement the policies established by the **Board**. The **Administrator** shall report to the Executive Committee and to the **Board**, as necessary.

### ARTICLE III: PROGRAM ELEMENTS

#### A. PROGRAM YEARS

1. Each **program year** shall be accounted for and the funds maintained separately from any other program of the **Authority**. The income and expenses of each **program year** shall be accounted for separately from any other **program year's** income or expenses.
2. Any excess funds at the end of the **program year** shall be retained by the PPP to pay claims and expenses which may be incurred in the future, or may be the subject of dividends or transfers between **program years** as provided in Section E, below.

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#### B. LIMITS OF LIABILITY

The **Board** shall annually establish the limit of liability for the PPP which may be amended from time to time for subsequent **program years**. This limit of liability shall apply to each real and/or personal property claim as described in the MOC for this PPP.

#### C. DEDUCTIBLES

1. The PPP shall provide ~~deductibles of \$5,000 for all property, and \$5,000 for all vehicles per occurrence~~ as determined by the Board for each **program year**, and set forth in the Declarations pages for each **participant**.
2. The amount of each loss, including expenses, which is less than the **deductible**, shall be paid by the **Participant**.

#### D. DEPOSIT PREMIUMS

1. The **Administrator**, in conjunction with an actuary, shall establish rates and **deposit premiums**, subject to **Board** approval, adequate to fund the actuarially determined losses in the pooled layer of the PPP, including the cost of excess coverage, flood premiums and the projected administrative costs of the PPP.
2. The annual **deposit premium** for each **Participant** shall be calculated by applying the **Participant's** most recent Total Insured Values (TIV) to 1) the funding level as determined by the actuary and recommended by the **Administrator**, 2) the cost of any excess coverage and flood premiums, and 3) a charge for the administrative and claims servicing expenses of the PPP as determined by the **Administrator**.

#### E. DIVIDEND AND ASSESSMENTS

##### 1. DIVIDENDS

- (a). At the end of each **fiscal year**, a dividend calculation shall be performed for all open **program years**. Each year thereafter there shall be an

additional dividend calculation made until such time as the **program year** is closed. Any dividends available to be declared and returned to the **Participants**, who are in good standing under the PLAN JPA and in compliance with their obligations under the PPP, will be at the discretion of the **Board** provided that the total dividend to be distributed from all qualifying **program years** shall not reduce the total equity for all **program years** below a discounted 90% confidence level.

(b). Calculation

- i. Dividends may not be declared from a **program year** until five years after the end of that **program year**.
- ii. Dividends may be declared only at such time as the PPP has equity, with liabilities actuarially stated discounted at a 90% confidence level. The calculated amount shall represent the maximum dividend available to be declared.
- iii. The dividend shall be reduced if any of the five succeeding **program years** (after the five years eligible for dividend calculation) have negative equity, ~~with liabilities actuarially stated at a discounted 90% confidence level in which case the Board will transfer equity between program years as it deems necessary pursuant to Section E.2(b) below, to re-establish an appropriate level of funding for the eprogram year(s) with negative equity.~~
- iv. Dividends may only be declared if the equity at the expected confidence level is five times the Self Insured Retention.

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2. ASSESSMENTS

- (a). Assessments may be levied on the **Participants** for the risk sharing layer of any **program year(s)**, as approved by the **Board**, at such time as an actuary finds that the assets of the PPP, ~~as a whole held for those program years~~, do not meet the expected discounted losses of the PPP ~~for those program year(s)~~. Each **Participant's** share of the assessment shall be allocated based upon the **deposit premiums** collected for the self-insured layer of each respective **program year** being assessed. If such assessment is not sufficient to relieve the pool of its actuarially determined deficit in the year of the assessment, such assessment shall be levied each subsequent year until the actuarially determined deficit is relieved. The timing of payment shall be determined by the **Board** at the time of assessment.
- (b). Equity from the risk sharing layer may be exchanged between eligible **program years** if sufficient funds are available. The transfer of equity will be performed so that the individual **Participant's** share of equity is

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separately applied so as to maintain the integrity of each **Participant's** balance.



F. EXCESS COVERAGE

1. The **Board** shall ensure that each **program year** is provided with excess property coverage for the **Participants**. It is the intent and purpose of the **Authority** to continue to provide such coverage to the **Participants**, provided that such coverage can be obtained and is not unreasonably priced. This coverage may be obtained from an insurance company, by participating in another pool established under the Government Code as a joint powers authority, or offered through another PPP pooling procedure. If the coverage is purchased from an insurance company, such insurance company shall have an A.M. Best Rating Classification of A or better and an A.M. Best Financial Rating of VII or better or their equivalents.
2. Premiums for such coverage shall be paid by the PPP from the proceeds received as **deposit premiums** from the **Participants**.
3. The **Board** may, from time to time, alter excess coverage based on insurance market conditions, available alternatives, costs, and other factors. The **Board** shall place excess coverage with the two competing objectives of security and minimizing costs to the PPP as a whole.

ARTICLE IV: ADMINISTRATION

A. BOARD

1. Discussion of developments and performance of the PPP may occur as part of any scheduled **Board** meeting.
2. The **Board** shall have the responsibility and authority to carry out and perform all functions and make all decisions affecting the PPP, consistent with the powers of the **Authority** and not in conflict with the **Agreement**, the Bylaws, or the MOC.

B. EXECUTIVE COMMITTEE

1. The Executive Committee shall have the responsibility and authority to carry out and perform all other functions and make all other decisions affecting the PPP, provided that such functions and decision are consistent with the powers of the **Authority** and are not in conflict with the **Agreement**, the Bylaws, or the MOC.
2. The Executive Committee shall meet at least twice a year to review the developments and performance of this PPP. The Executive Committee shall review, study, advise, make recommendations to the **Board**, or take any action which the Committee believes to be in the best interests of the PPP and its **Participants**, provided that such action is not prohibited by law or is not an action reserved unto the **Board**.

C. ADMINISTRATOR

The **Administrator** shall be responsible for:

1. The overall operation of the PPP;
2. Monitoring the status of the PPP and its operations, the development of losses, the program's administrative and operational costs, service companies' performance, and brokers' performance;
3. Assisting the **Board** in selecting brokers, actuaries, auditors, and other service companies;
4. Promoting the programs to prospective new participants;
5. Preparing, distributing, and maintaining all records of the PPP, including its MPD and MOC as these may be amended from time to time; and
6. Preparing Certificates of Coverage as may be required by the **Participants** in the PPP.

ARTICLE V: CLAIMS ADMINISTRATION

A. DISPUTES REGARDING MANAGEMENT OF A CLAIM

1. Any matter in dispute between a **Participant** and the **Third Party Administrator** shall be called to the attention of the **Administrator** and heard by the Executive Committee whose decision may be appealed to the **Board** within thirty (30) days of the Committee's decision. If no appeal is filed, the decision of the Executive Committee shall be final.
2. When an appeal has been filed, the **Board** shall meet ~~within forty five (45) days~~ to hear the appeal. The **Participant** shall be permitted to present evidence and argument, subject to reasonable time constraints, but the **Participant's** representative on the Board shall be excluded from final deliberation and vote on the appeal. The decision of the **Board** will be final.

ARTICLE VI: PARTICIPATION

A. ELIGIBILITY AND APPLICATION

1. ELIGIBILITY

- (a). A new applicant must commit to at least three full **program years** of participation in this PPP.

- (b). Any **Member Entity** may apply to participate in the PPP by providing an adopted resolution of its governing body and such other information/materials as may be required. The applicant's resolution shall commit the applicant to three full **program years** of participation in the PPP, if accepted, and consent to be governed for property coverage in accordance with the MPD, the MOC and other documents and policies adopted by the **Board**.
- (c). The application for participation shall be submitted at least thirty (30) days prior to the date of the last **Board** meeting of the **program year** to ensure the **Board** has adequate time to review and evaluate the acceptability of the applicant. It is recommended that an applicant only enter the PPP at the commencement of a new **program year**. If an applicant chooses to enter the PPP at any other time, the **deposit premium** for the remainder of the **program year** will be pro-rated. The new **Participant** will begin coverage on the date that is mutually acceptable to the new **Participant** and the **Board**; however, the new **Participant** will be required to share losses with the other **Participants** of the PPP for the entire **program year**.

## 2. APPROVAL OF APPLICATION

The **Board** shall, after reviewing the resolution and other underwriting criteria, determine the acceptability of the exposures presented by the applicant and shall advise the applicant in writing of its decision to accept or reject the request within ten (10) days after the decision has been made.

## B. PARTICIPANTS' DUTIES

- 1. The **Participants** shall be responsible for providing the data required by the **Authority** to determine the values of covered properties. The data shall be factual and provided in a timely manner in conformance with the policies adopted by the **Board**.
- 2. The **Participants** shall disclose activities not usual and customary in their operation.
- 3. The **Participants** shall at all times cooperate with the **Authority's Administrator**, Litigation Manager, **Third Party Administrator**, with regard to claims handling and underwriting activities of the **Authority**.
- 4. Each year the **Authority** shall bill **Participants** for a **deposit premium** for the next **program year**. The billings shall be due and payable in accordance with the Bylaws.
- 5. Billings may be made to **Participants** for a **program year** found to be actuarially unsound. All billings for payments to bring a **program year** into an actuarially

sound condition are due and payable upon receipt.

6. Former **Participants** in the PPP shall be required to pay all applicable billings for the **program years** in which they participated. Delinquent billings, together with penalties and interest, shall be charged and collected from the **Participant** in accordance with the Bylaws.
7. Penalties and interest shall be charged against any amounts delinquent in accordance with the Bylaws.

## C. TERMINATION

### 1. VOLUNTARY TERMINATION

(a). A **Participant** shall not be permitted to withdraw from the PPP prior to the end of its commitment period of three full **program years**, and shall be obligated for payment of premiums for these three years.

(b). A **Participant** which has maintained its participation in the PPP for three full **program years** may terminate its participation if, at least six months before the next **program year**, a written request to terminate participation is received from the **Participant**.

(c). Any **Participant** seeking to terminate its participation without proper and timely notice shall be responsible for the full cost of the next **program year's** premium. The notice will be deemed effective for the **program year** following the year in which the additional premium is paid.

### 2. INVOLUNTARY TERMINATION

(a) The **Board** may initiate termination of a **Participant** from the PPP for the following reasons:

- (i) Termination as a **Member Entity** of the **Authority**;
- (ii) Declination to cover the **Participant** by the entity providing excess coverage;
- (iii) Nonpayment of premiums, assessments, or other charges;
- (iv) Frequent late payment of premiums, assessments, and/or other charges, subject to interest and penalty charges;
- (v) Failure to timely provide requested underwriting information;
- (vi) Consistent poor loss history relative to the pool;

- (vii) Substantial change in exposures which are not acceptable in this PPP; and/or
- (viii) Financial impairment that is likely to jeopardize this PPP's ability to collect amounts due in the future.

The Board's determination of the existence of any of these conditions shall be final.

- (b) The **Board** shall have the authority, upon a two-thirds approval, to authorize a termination notice be sent to a **Participant**. Such notice shall be sent at least 60 days prior to the effective date of termination.

### 3. CONTINUED LIABILITY UPON TERMINATION

Termination of participation, whether voluntary or involuntary, in future **program years** does not relieve the terminated **Participant** of any benefits or obligations of those **program years** in which it participated. These obligations include payment of assessments, retrospective adjustments, or any other amounts due and payable.

## ARTICLE VII: TERMINATION AND DISSOLUTION OF THE PPP

The PPP may be terminated and dissolved any time by a vote of two-thirds of the **Participants**. However, the PPP shall continue to exist for the purpose of disposing of all claims, distributing assets, and all other functions necessary to conclude the affairs of the PPP.

Upon termination of the PPP, all assets of the PPP shall be distributed only among the **Participants**, including any of those which previously withdrew pursuant to Article VI, in accordance with and proportionate to their **deposit premiums** and assessments paid during the term of participation. The **Board** shall determine such distribution within six months after the last pending claim or loss covered by the PPP has been finally resolved and there is a reasonable expectation that no new claims will be filed.

## ARTICLE VIII: AMENDMENTS

This MPD may be amended by a two-thirds (2/3rds) vote of the **Participants** present and voting at the meeting, provided prior written notice, as provided within the **Agreement**, has been given to the **Board**.

## Appendix A

City of American Canyon	Town of Los Gatos
Town of Atherton	City of Millbrae
City of Benicia	City of Milpitas
City of Burlingame	City of Morgan Hill
City of Campbell	City of Newark
Town of Colma	City of Pacifica
City of Cupertino	Town of Portola Valley
City of Dublin	Town of Ross
City of East Palo Alto	City of San Bruno
City of Foster City	City of San Carlos
City of Half Moon Bay	City of Saratoga
Town of Hillsborough	City of South San Francisco
Town of Los Altos Hills	City of Suisun City
Town of Tiburon	Town of Woodside

RESOLUTION NO. xxxx

RESOLUTION OF THE BOARD OF DIRECTORS OF THE POOLED LIABILITY ASSURANCE NETWORK  
(PLAN) JOINT POWERS AUTHORITY

AUTHORIZING PARTICIPATION IN  
CALIFORNIA AFFILIATED RISK MANAGEMENT AUTHORITIES

WHEREAS, the California Affiliated Risk Management Authorities (CARMA) was formed to provide excess liability coverage with limits of liability of \$9,000,000 excess of \$1,000,000 each occurrence to joint powers insurance authorities; and

WHEREAS, the initial premium of CARMA applicable to PLAN JPA for the first year is estimated at \$x,xxx,xxx; and

WHEREAS, the Board of Directors of PLAN believe that joining CARMA is in the best interest of its members to participate in CARMA;

NOW, THEREFORE, BE IT RESOLVED, THAT:

1. PLAN desires to participate in CARMA beginning July 1, 2021 for a minimum period of three years;
2. PLAN staff is hereby authorized and directed to pay to CARMA, when due, the initial premium after finalized at the June 2021 CARMA Board Meeting; and
3. The President of the PLAN Board of Directors is hereby authorized and directed to sign the JPA Agreement to participate in CARMA on or before June 30, 2021.

This Resolution was adopted by the PLAN Board of Directors at a regular meeting of the Board of Directors held on June 18, 2021 virtually by the following vote:

AYES:

NOS:

ABSTAIN:

ABSENT:

PLAN Board President: \_\_\_\_\_

Attest, PLAN General Manager: \_\_\_\_\_

**JOINT POWERS AGREEMENT**  
**CREATING THE**  
**CALIFORNIA AFFILIATED RISK MANAGEMENT AUTHORITIES**  
**(CARMA)**



**CALIFORNIA AFFILIATED RISK MANAGEMENT AUTHORITIES  
(CARMA)**

**JOINT POWERS AGREEMENT**

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## **CALIFORNIA AFFILIATED RISK MANAGEMENT AUTHORITIES (CARMA)**

This *Agreement* is made by and among the undersigned joint powers authorities that are public entities organized and operating under the laws of the State of California.

### **RECITALS**

1. The following state laws, among others, authorize the *Members* to enter into this *Agreement*:
  - A. Government Code Sections 989 and 990 permitting a local public entity to insure itself against liability and other losses;
  - B. Government Code Section 990.4 permitting local public entity to provide insurance and self-insurance in any desired combination;
  - C. Government Code Section 990.8 permitting two or more local entities to enter into an agreement to jointly fund such expenditures under the agency to Government Code Sections 6500-6515; and
  - D. Government Code Sections 6500-6515 permitting two or more local public entities to jointly exercise under an agreement any power which is common to each of them.
2. Each of the parties to this *Agreement* desires to join with the other parties for the purposes of:
  - A. Developing effective risk management programs to reduce the amount and frequency of their losses;
  - B. Pooling their self-insured losses; and
  - C. Jointly purchasing *excess insurance* and administrative services in connection with any of the *Coverage Programs* for said parties.
3. The governing board of each undersigned agency has determined that it is in its own best interest and in the public interest that this *Agreement* be executed and that it shall participate as a *Member* of the public entity created by this *Agreement*.

NOW, THEREFORE, the undersigned, in consideration of the mutual benefits, promises and agreements set forth below, hereby agree as follows:

**ARTICLE I**  
**CREATION OF CALIFORNIA AFFILIATED RISK MANAGEMENT AUTHORITIES**

Pursuant to Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500), the parties hereto hereby create a public authority, separate and apart from the parties hereto, to be known as the California Affiliated Risk Management Authorities, hereinafter referred to as *CARMA*.

**ARTICLE II**  
**PURPOSES**

This *Agreement* is entered into by *Members* pursuant to the provisions of California Government Code Sections 990, 990.4, 990.8, and 6500, et seq., to:

- A. Develop effective risk management programs to reduce the amount and frequency of their losses;
- B. Share the risk of self-insured losses; and
- C. Jointly purchase *excess insurance* and administrative and other services including, but not limited to: claims adjusting, data processing, risk management, loss prevention and legal services in connection with any of the *Coverage Programs* for said parties. These purposes shall be accomplished through the exercise of the powers of the *Members* jointly in the creation and operation of *CARMA*.

It is also the purpose of this *Agreement* to provide, to the extent permitted by law, for the inclusion at a subsequent date of such additional public entities organized and existing under the Constitution or laws of the State of California as may desire to become parties to this *Agreement* and *Members* of *CARMA*, subject to Article XIX.

It is also the purpose of this *Agreement* to provide for the removal of *Members* for cause or upon request.

### **ARTICLE III**

### **DEFINITIONS**

Unless the context otherwise requires, the following terms shall be defined as herein stated:

- A. "Agreement" shall mean the joint powers agreement creating the California Affiliated Risk Management Authorities.
- B. "Alternate" shall mean the person designated by the *Member* to act as a director of *CARMA* in the absence of the *Representative*. The *Alternate* shall have the same responsibility, power and authority as the *Representative*.
- C. "Alternative Risk Financing" shall mean any financing other than *Deposit Premiums, Deferred Capital Contributions, Assessments*, or commercial insurance.
- D. "Assessment" shall mean an amount determined by the *Board of Directors*, to be paid by each *Member* as necessary to meet *CARMA's* obligations.
- E. "CARMA" shall mean the California Affiliated Risk Management Authorities created by the *Agreement*.
- F. "Board" or "Board of Directors" shall mean the governing body of *CARMA* composed of a representative of each *Member*.
- G. "Certificate of Coverage for Additional Party" shall mean the document issued by *CARMA* to third parties specifying the type and amount of pooled coverage provided by *CARMA* and extended to the named third party for the specified purpose.
- H. "Coverage Programs" shall mean coverages provided directly by *CARMA* pursuant to a *Memorandum of Coverage* and/or provided by a purchased *coverage*. These may include, but are not limited to, property, workers' compensation, and liability coverages as may be determined by the *Board*.
- I. "Deferred Capital Contributions" shall mean dollar amounts encumbered by resolution by each *Member* necessary to meet the capital requirements as determined by the *Board of Directors* for each *Member*.
- J. "Deposit Premium" shall mean the annual dollar amount determined by the *Board of Directors* which is payable by each *Member* as its established share of the funding required to cover the financial obligations of each *Coverage Program* in which the *Member* participates.

- K. "Excess Insurance" shall mean that commercial insurance or reinsurance purchased by *CARMA* to cover losses in excess of *CARMA's Coverage Program* limits and/or each *Member's self-funded retention*.
- L. "Master Program Document" shall mean the document that sets forth the operations, policies and procedures of a given *Coverage Program*.
- M. "Member" shall mean any organization that is a party to the *Agreement*.
- N. "Memorandum of Coverage" shall mean a document issued by *CARMA* to *Members* specifying the type, amount and conditions of coverage provided to each participant by *CARMA*.
- O. "Program Year" shall mean a period of time determined by the *Board*, usually 12 months, into which each *Coverage Program* shall be segregated for purposes of accounting and record-keeping.
- P. "Representative" shall mean the person designated by the *Member* to act as a director of *CARMA*. The *Representative* shall have the authority to bind the *Member* on any and all matters relating to the business of *CARMA*.
- Q. "Self-Funded Retention" shall mean, unless otherwise provided, the amount of a claim that the *Member* must pay out of its own funds before *CARMA*, or any applicable purchased *Coverage Program*, is obligated to pay.

**ARTICLE IV**  
**PARTIES TO AGREEMENT**

Each party to this *Agreement* certifies that it intends to, and does, contract with all other parties who are signatories of this *Agreement* and, in addition, with such other parties as may later be added as parties to, and signatories of, this *Agreement* pursuant to Article XIX. Each party to this *Agreement* also certifies that the deletion of any party from this *Agreement* shall not affect this *Agreement* or the remaining parties' intent to contract as described above with the other parties to the *Agreement* then remaining.

**ARTICLE V**  
**TERM OF AGREEMENT**

This *Agreement* shall become effective when executed by three or more joint powers authorities with a combined payroll of \$350,000,000 and shall continue in full force until terminated in accordance with Article XXIII.

**ARTICLE VI**  
**POWERS OF CARMA**

*CARMA* is authorized, in its own name, to do all acts necessary to fulfill the purposes of this *Agreement* as referred to in Article II, including, but not limited to:

- A. Make and enter into contracts;
- B. Incur debts, liabilities and obligations, but no debt, liability or obligation of *CARMA* is a debt, liability or obligation of any *Member*, except as otherwise provided by Articles XXII and XXIII;
- C. Acquire, hold or dispose of real and personal property;
- D. Receive contributions and donations of property, funds, services and other forms of assistance from any source;
- E. Sue and be sued in its own name;
- F. Employ agents and employees;
- G. Lease real or personal property, including that of a *Member*;
- H. Receive, collect, invest and disburse monies;
- I. Develop and administer *Coverage Programs* as the *Board* may approve; and
- J. Undertake such other activities as may be necessary to carry out the purposes of this *Agreement*.

These powers shall be exercised in the manner provided by applicable law and as expressly set forth in this *Agreement*.

*CARMA's* powers are those that are common to all members.

**ARTICLE VII**  
**MEMBERS POWERS AND RESPONSIBILITIES**

**A. POWERS**

The *Members* shall have the following powers:

1. To approve the *Agreement*;
2. To appoint a *Representative* and *Alternate* to the *Board of Directors*; and
3. To decide if and when the *Agreement* should be terminated.

**B. RESPONSIBILITIES**

The *Members* shall have the following responsibilities:

1. To cooperate fully with *CARMA* in determining the cause of losses and in the settlement of claims, as defined in the *Memorandum of Coverage*;
2. To pay *Deposit Premiums* and any adjustments or *Assessments* thereto promptly to *CARMA* when due;
3. To provide *CARMA* with such statistical loss experience data and other information as may be necessary for *CARMA* to carry out the purposes of this *Agreement*;
4. To cooperate with and assist *CARMA* and any insurer, claims adjuster, claims auditor, or legal counsel retained by *CARMA* in all matters relating to this *Agreement* and to comply with the Bylaws and all policies and procedures adopted by the *Board*; and
5. To abide by all decisions of the *Board*.

**ARTICLE VIII**  
**BOARD OF DIRECTORS**

There shall be a *Board of Directors* to govern the affairs of *CARMA*. *CARMA's Board* shall be comprised of a *representative* from each *Member*. Said *representative*, or *alternate*, shall have authority to bind the *Member* on all matters pertaining to this *Agreement*.

The powers of the *Board*, unless otherwise delegated pursuant to the Bylaws, shall be all of the powers of *CARMA* not specifically reserved to the *Members* by this *Agreement* and shall include, but not be limited to, Article VI of this *Agreement*.



**ARTICLE IX**  
**ELECTION, APPOINTMENT AND DUTIES OF OFFICERS**

The election, appointment and duties of officers shall be as set forth in the Bylaws.

**ARTICLE X**  
**MEETINGS AND RECORDS**

**A. BOARD MEETINGS**

The *Board* shall hold at least one regular meeting each fiscal year as defined in Article XII of this *Agreement*. The *Board* shall fix the date, hour and place at which each regular meeting is to be held in accordance with the Bylaws. Special meetings may be called and noticed in accordance with the Bylaws. Written notice of such special meetings shall be delivered to each *Board Member* at least twenty-four hours before such meeting.

Each meeting of the *Board*, including, without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the Ralph M. Brown Act (Section 54950, et. seq. of the Government Code).

**B. RECORDS**

The Secretary shall keep or have kept minutes of all regular, adjourned regular and special meetings of the *Board*. As soon as possible after each meeting, the Secretary shall forward a copy of the minutes to each representative of the *Board*.

**ARTICLE XI**  
**BYLAWS AND ADMINISTRATIVE POLICIES AND PROCEDURES**

The *Board* shall through resolution, adopt, rescind or amend Bylaws and administrative policies and procedures consistent with applicable law and this *Agreement* to govern the day-to-day operations of *CARMA*. Each representative and alternate shall receive a copy of any bylaws, *Master Program Document*, and administrative policies and procedures developed under this Article.

The Secretary shall promptly send to each representative and alternate each Bylaw amendment, *Master Program Document* change, and administrative policy and procedure change after its adoption by the *Board*.

**ARTICLE XII**  
**FISCAL YEARS**

*Fiscal years of CARMA shall begin on July 1 and end on June 30.*

**ARTICLE XIII**  
**BUDGET**

*The Board shall adopt an annual budget prior to the beginning of each fiscal year.*

**ARTICLE XIV**  
**FINANCIAL AUDITS**

*The Board of Directors shall cause a financial audit as set forth in the Bylaws. Such financial audit shall be filed as a public record with each of the Members and the State Controller as required by law. All costs of such financial audit shall be paid by CARMA and shall be charged against the Members in the same manner as other administrative costs.*

**ARTICLE XV**  
**ESTABLISHMENT AND ADMINISTRATION OF FUNDS**

*CARMA shall be responsible for the strict accountability of all funds and reports of all receipts and disbursements. It will comply with all provisions of law relating to the subject, particularly Section 6505 of the California Government Code.*

*All of the monies of CARMA may be invested in common. However, each Program Year shall be accounted for separately on a full accrual basis.*

*The Treasurer shall receive, invest and disburse funds only in accordance with the guidelines and procedures established by the Board in its adopted investment policy that shall be in conformity with applicable law.*

**ARTICLE XVI**  
**DEPOSIT PREMIUM**

*The Deposit Premium for each Member shall be calculated and paid as stated in the Bylaws and Master Program Document.*

**ARTICLE XVII**  
**ASSESSMENTS AND DIVIDENDS**

*Assessments* and dividends for each *Member* shall be calculated as provided for in the Bylaws and the *Master Program Document*.

**ARTICLE XVIII**  
**COVERAGE PROGRAMS**

The *Board* may adopt such *Coverage Programs* as it deems necessary to further the goals of its *Members*. All *Coverage Programs* shall be defined by a *Memorandum(s) of Coverage*; insurance policy(ies), or document(s) with a copy provided to each *Member*.

**ARTICLE XIX**  
**NEW MEMBERS**

Admission to *CARMA* requires approval of two-thirds of the *Board* and is conditioned upon the applicant executing the *Agreement*. Membership shall become effective upon the date established by the *Board*. Prospective *Members* may apply for participation in *CARMA* as provided for in the Bylaws and *Master Program Document*.

**ARTICLE XX**  
**WITHDRAWAL**

Any *Member* of *CARMA* may withdraw from its status as a *Member* and as a party to the *Agreement* only after participation for at least three full *Program Years*. The withdrawal may be effective only at the end of a fiscal year. Any withdrawing *Member* must notify *CARMA* in writing at least six (6) months prior to the end of the fiscal year that it intends to withdraw.

After withdrawal, the withdrawing *Member* shall continue to be responsible for any *Assessments* made for years of Membership.

**ARTICLE XXI**  
**EXPULSION**

*CARMA* may expel any *Member*, with or without cause, as a participant in any *Coverage Program* or as a *Member* of *CARMA* by a two-thirds vote of the *Board*.

**ARTICLE XXII**  
**EFFECT OF WITHDRAWAL OR EXPULSION**

The withdrawal or expulsion of any *Member* after the inception of its participation in any *coverage program* shall not terminate its responsibility to:

- A. Cooperate fully with *CARMA* in determining the cause of the losses and in the defense or settlement of claims, as defined in the *Memorandum of Coverage*;
- B. Pay any *Assessments* determined by the *Board* to be due and payable for each *Program Year* in which it participated;
- C. Provide *CARMA* with such statistical and loss experience data and other information as may be necessary for *CARMA* to carry out the purposes of this *Agreement*; and
- D. Cooperate with and assist *CARMA*, any insurer, claims adjuster or legal counsel retained by *CARMA*, in all matters relating to this *Agreement*.

**ARTICLE XXIII**  
**TERMINATION AND DISTRIBUTION**

This *Agreement* may be terminated any time during the first three years by the written consent of all *Members*, and thereafter by the written consent of two-thirds of the *Members*. However, this *Agreement* and *CARMA* shall continue to exist for the purpose of disposing of all claims, distributing assets and all other functions necessary to conclude the affairs of *CARMA*.

Upon termination of this *Agreement*, all assets of *CARMA* shall be distributed only among the parties that have been participants in the *Coverage Programs*, including any of those parties which previously withdrew pursuant to Articles XX and XXI of this *Agreement*, in accordance with and proportionate to their *Deposit Premiums* and *Assessments* paid during the term of this *Agreement*. The *Board* shall determine such distribution within six months after the last pending claim or loss covered by this *Agreement* has been finally resolved and there is a reasonable expectation that no new claims will be filed.

The *Board* is vested with all powers of *CARMA* for the purpose of concluding and dissolving the business affairs of *CARMA*. These powers shall include the power to require *Members*, including those which were *Coverage Program* participants at the time the claim arose or at the time the loss was incurred, to pay their share of any *Assessments* deemed necessary by the *Board* for final disposition of all claims and losses covered by this *Agreement* for any *Program Year*.

**ARTICLE XXIV**  
**NOTICES**

Notices to *Members* under this *Agreement* shall be sufficient if mailed to their respective addresses on file with *CARMA*. Notices to *CARMA* shall be sufficient if mailed to the address of *CARMA* as adopted by the *Board*.

**ARTICLE XXV**  
**PROHIBITION AGAINST ASSIGNMENT**

No *Member* may assign any right, claim or interest it may have under this *Agreement*, and no creditor, assignee or third party beneficiary of any *Member* shall have any right, claim or title to any part, interest, funds, *Deposit Premium* or asset of *CARMA*.

**ARTICLE XXVI**  
**AMENDMENTS**

This *Agreement* may be amended by written approval of two-thirds (2/3rds) of the *Representatives*. Upon signature of any amendment by two-thirds (2/3rds) of the *Representatives*, any *Member* failing or refusing to abide by such amendment may be expelled in accordance with the provisions of Article XXII.

**ARTICLE XXVII**  
**SEVERABILITY**

Should any portion, term, condition or provision of this *Agreement* be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions and provisions shall not be affected thereby.

**ARTICLE XXVIII**  
**HOLD HARMLESS AND INDEMNIFICATION**

Section 895.2 of the California Government Code imposes certain tort liability jointly upon entities solely by reason of such entities being parties to an agreement as defined in Section 895 of said Code. Therefore, the *Members* hereto, as between themselves, pursuant to the authorization contained in Sections 895.4 and 895.6 of the California Government Code, each assumes the full liability imposed upon it or any of its officers, agents, or employees by law for injuries caused by a negligent or wrongful act or omission occurring in the performance of this *Agreement* to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To

achieve this purpose, each *Member* indemnifies and holds harmless all other *Members* for any loss, cost, or expense that may be imposed upon such other *Member* when solely by virtue of Section 895.2 of the California Code. No *Member* shall be jointly and severally liable for any debts or obligations of *CARMA* or any other *Member*.

**ARTICLE XXIX**  
**AGREEMENT COMPLETE**

The foregoing constitutes the full and complete agreement of the parties. There are no oral understandings or agreements not set forth in writing herein.

**ARTICLE XXX**  
**EXECUTION OF COUNTERPARTS**

This *Agreement* may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same *Agreement*.

IN WITNESS WHEREOF, the parties hereto have executed the Joint Powers *Agreement* for the pooling of self-insurance as of the 1<sup>st</sup> day of July, 2021.

**Pooled Liability Assurance Network Joint Powers Authority:**

**By:**  
    **President**

**By:**  
    **Secretary**

# GIBBONS & CONLEY

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## MEMORANDUM -- CONFIDENTIAL

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**To:** Jon Paulsen, PLAN JPA                      **Date:** June 10, 2021

**From:** A. Byrne Conley

**Re:** *Comparison of PLAN and CARMA MOCs*

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Per your request, I reviewed the Memoranda of Coverage for PLAN alongside the MOC for CARMA as PLAN is considering joining the CARMA excess program.

I worked on CARMA's Memorandum in its early years, and on PLAN's MOC more recently, so the documents have many basic similarities although there are some differences in wording in each. There is no major area of disagreement, such a subsidence exclusion in one but not the other, and each of them excludes Employment Practices Liability claims.

I did not see anything that led me to think the PLAN Board needs to change its Memorandum of Coverage immediately. If the Board wishes, a committee could be assigned to examine the precise differences, in order to bring the two documents more closely into alignment, but that would take some time and discussion and again, I do not think it is necessary to change the current PLAN MOC language for this coming program year.

Here is a list of major definitions and of the Exclusions, noting where there are material differences.

### **Definitions**

- Bodily Injury – standard definition, both similar.
- Property Damage – standard definition, both similar
- Personal Injury – standard for pools, both similar
- Public Officials E and O – standard for pools, both similar
- Damages – similar, except that PLAN puts limitations in what is covered that CARMA puts instead in exclusions.

### **Exclusions (going by comparison between PLAN and discussing the CARMA equivalent)**

- A – Expected or Intended by a covered party; CARMA Excl. 21 is similar but makes exception for vicarious liability where no ratification (we might consider adopting this.

- B – Pollutants, absolute if from our premises of transit. CARMA Exclusion 1 is a bit narrower; provides sudden and accidental upon 7 day discovery and 40 day reporting, though not from sites for processing or storage of waste. Again we might consider adopting this.
- C – Hospitals and airports. CARMA Exclusions 5 and 6 are similar.
- D – medical malpractice, not EMTs. CARMA Exclusion 7 is similar in effect though worded differently.
- E – Dam. Same as CARMA Exclusion 22.
- F – Nuclear. Same as CARMA Exclusion 8.
- G and H – Land use planning and regulation, inverse condemnation. CARMA Exclusion 9 is different, ours is more specific as to actions affecting property rights, with CARMA referring to land use regulations or planning policies more generally, but probably to the same effect; and CARMA combining a reference to inverse condemnation and exceptions for accidental property damage caused by weather, subject to a sublimit. We should discuss these further, with examples, particularly as to how they would operate to cover or exclude a Plaintiff’s attorney fee claim.
- I – noncompliance with Codes. CARMA Exclusion 29 is similar and refers also to court orders.
- J – Aircraft (except drones). CARMA Exclusion 11 is similar in effect.
- K – transit except non-fixed-route. CARMA has no similar exclusion.
- L – failure to supply. CARMA Exclusion 12 is the same.
- M – workers comp, disability, unemployment. CARMA Exclusion 4 is the same. We also exclude this in the definition of “Damages.”
- N – injury to employees. CARMA Exclusion 3 is similar but limited to Bodily Injury
- O – EPL. CARMA Exclusion 2 is similar.
- P – claims by a covered party. CARMA Exclusion 23 is similar, claims by Entity against officers or employees.
- Q - Owned property. CARMA Exclusion 10 is similar.
- R – willful violation of penal statute. CARMA Exclusion 21 probably yields same result.
- S – refunds of taxes or assessments. CARMA Exclusion 27 is the same.
- T – unjust enrichment under E and O. CARMA Exclusion 28 is the same, but applies to all coverages.
- U – bidding, contracting. CARMA exclusion 30 is narrower, making an exception for plans approved by a City architect, which I do not think we want.
- V – breach of contract under E and O. CARMA Exclusion 16 is the same but applies to all coverages.
- W – securities and debt. I did not see a similar exclusion in the CARMA form.
- X – sexual abuse, except negligent hiring claim. CARMA has no similar exclusion, but Exclusion 21 would apply to the perpetrator.



**Re:** *Comparison of PLAN and CARMA MOCs*

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- Y – fines, penalties, multipliers, punitive damages. CARMA Exclusion 18 is similar.
- Z – cyber liability. CARMA Exclusion 32 is the same.

**Exclusions in CARMA form not in PLAN's**

- 13 – trampolines
- 14 – skateboards unless covered in primary pool (therefore not applicable to our members)
- 15 – bungee jumping
- 17 – liability assumed in contract unless additional covered party PLAN does not have “broad form contractual” liability coverage for liability assumed in a contract or agreement arising from the Member’s routine governmental operations. We should probably consider whether to adopt CARMA’s language or something similar.
- 19 – Ultimate Net Loss other than money damages. PLAN handles this in the Damages definition.
- 20 – Asbestos. PLAN does not have an asbestos exclusion though the Pollution exclusion should apply.
- 24 – known false statements. This is ISO language that PLAN does not have, but PLAN Exclusion A should have the same effect.
- 25 – Uninsured Motorists. We provide this exclusion in the Covered Party definition.
- 26 – reasonable accommodation under the ADA. We do not have this specifically, but exclude the cost of complying with injunctive relief in the definition of “Damages.”
- 31 – Under E and O, BI, PD, PI are excluded.
- 33 – silica, mold, fungus. PLAN does not exclude these by name, but they should be considered excluded by the Pollution exclusion. Often these more specific named exclusions are added at the insistence of reinsurers (which is why then tend to appear at the end).

**Conclusion. These are the most important issues we should consider addressing, at some point, based on a comparison of MOCs.**

- Compare the Expected or intended exclusions and decide if we want to conform them more closely.
- Pollution exclusion exceptions (same).
- Broad form contractual (liability assumed by contract).
- Land use planning and inverse exclusions should be compared.

Given the short time frame, in my view this can wait for review at the Committee level and be brought back to the Board after a full review and discussion.