



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

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## **CLAIMS COMMITTEE MEETING AGENDA**

**Thursday, March 16, 2023  
1:30 p.m.**

**Zoom**

**Please contact Katie Sullivan for videoconference information.**

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All or portions of this meeting will be conducted by teleconferencing in accordance with Government Code Section 54953(b). Teleconference locations are as follows: Sedgwick, 1750 Creekside Oak Drive, Suite 200, Sacramento, CA 95833; City of Burlingame, 501 Primrose Rd, Burlingame, CA 94010; Town of Hillsborough, 1600 Floribunda Ave, CA 94010; Town of Los Gatos, 110 East Main St., Los Gatos, CA 95030; City of Morgan Hill, 17575 Peak Ave, Morgan Hill, CA 95037; and City of San Carlos, 600 Elm St, San Carlos, CA 94070.

Each location is accessible to the public, and members of the public may address the Claims Committee from any teleconference location.

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 [katie.sullivan@sedgwick.com](mailto:katie.sullivan@sedgwick.com) (916) 244-1164 or (916) 244-1199 (fax). 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) Claims Committee 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 Committee relative to matters of the Claims Committee 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.
- 4**     **5. CONSENT CALENDAR**
- 5**     \*A. Minutes from the January 26, 2023, Claims Committee Meeting  
*Recommendation: Staff recommends the Claims Committee approve the Consent Calendar.*
- 6. CLAIMS MATTERS**
- 8**     \*A. Review of PLAN JPA Governing Documents Related to Executive and Claims Committee Consolidation  
*Recommendation: Staff recommends the Claims Committee recommend to the Board of Directors approval of PLAN JPA's Bylaws, Master Program Document for the Liability Program, and Claims Policy, as revised, pending approval recommendation of the Executive Committee.*
- 7. CLOSED SESSION**
- A. Pursuant to Government Code Section 54956.95(a), the Committee will hold a closed session to discuss the following claims:
- Jason Burkleo v. Town of Atherton
  - Richard Giddens v. City of Suisun City
  - Town of Hillsborough (Police Department Building) 4A2301LFLMS - 0001
  - Gregory and Jennifer Holmes v. San Carlos
- B. Pursuant to Government Code Section 54957.1, the Committee will report in open session any reportable action taken in closed session.
- 8. GENERAL MANAGER'S REPORT**
- 53**     A. Report from PLAN JPA's General Manager  
*Recommendation: None.*
- 9. CLOSING COMMENTS**  
This time is reserved for comments by Claims Committee members and/or staff and to identify matters for future Claims Committee business.
- A. Claims Committee
- B. Staff
- 10. ADJOURNMENT**

**NOTICES:**

- The next Claims Committee meeting will occur on Thursday, April 27, 2023, at 1:30pm via videoconference.

March 16, 2023

Agenda Items 5.A

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

**STAFF RECOMMENDATION:**

*Staff recommends the Claims Committee approve the Consent Calendar.*

**REFERENCE MATERIALS ATTACHED:**

A. Minutes from the January 26, 2023, Claims Committee Meeting

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

**MINUTES OF THE CLAIMS COMMITTEE  
MEETING OF JANUARY 26, 2023**

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A regular meeting of the Claims Committee was held on January 26, 2023, via videoconference.

**MEMBERS PRESENT:** Donald Larkin, Chair, Morgan Hill (*Arrived during Closed Session*)  
Michael Guina, Burlingame  
Ann Ritzma, Hillborough (*Arrived during Agenda Item 3*)  
Gabrielle Whelan, Los Gatos  
Rebecca Mendenhall, San Carlos

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Eric Dahlen, PLAN JPA General Manager  
Katie Sullivan, PLAN JPA Assistant General Manager  
Susan DeNardo, PLAN JPA Litigation Manager  
Greg Rubens, Board Counsel  
Todd Master, Howard, Rome, Martin & Ridley, LLP

**1. CALL TO ORDER:**

The Regular Meeting of the PLAN JPA Claims Committee meeting was called to order at 1:30 p.m.

**2. INTRODUCTIONS:**

A roll call was taken and it was determined there was a quorum present.

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

Susan DeNardo, PLAN JPA Litigation Manager, informed the Committee the matter of Burkleo v. Town of Atherton would not be discussed.

*Michael Guina moved to approve the amended agenda. Gabrielle Whelan seconded the motion. A roll call vote was taken and the motion passed unanimously by Michael Guina, Gabrielle Whelan, and Rebecca Mendenhall. Ann Ritzma abstained from voting.*

**4. PUBLIC COMMENTS:**

None.

**5. CONSENT CALENDAR:**

*Michael Guina moved to approve the following items: A) Minutes from the November 17, 2022, Claims Committee Meeting, and B) Minutes from the December 8, 2022, Claims Committee Meeting. Ann Ritzma seconded the motion. A roll call vote was taken and the motion passed unanimously by Michael Guina, Ann Ritzma, Gabrielle Whelan, and Rebecca Mendenhall.*

**6. CLAIMS MATTERS:**

**A. Update from PLAN JPA Litigation Manager**

Susan DeNardo, PLAN JPA Litigation Manager, provided the following updates to the Claims Committee:

- Government Claims Manual – the Litigation Management Department has updated its Government Claims Manual. The manual provides information and forms for members and PLAN JPA’s Third Party Administrator to reference when handling a government claim. Ms. DeNardo advised members should still consult with their City Attorney’s Office for legal advice.
- Danielle Lewis – PLAN JPA Defense Panel Counsel Danielle Lewis joined Hawkins Parnell as of January 1, 2023. She brought her existing PLAN JPA case load with her to the new firm and would like to continue to represent members as panel counsel. She is not currently requesting a rate increase.

**7. CLOSED SESSION:**

A. The Committee convened to closed session, pursuant to Government Code section 54956.95(a) at 1:37 p.m. to discuss the following claims:

- Giddens v. City of Suisun City
- Moore v. City of Suisun City
- Glorioso v. City of Millbrae, et al

B. Pursuant to Government Code Section 54957.1, the Committee reconvened to open session at 2:17 p.m. The following actions were taken under closed session:

*No reportable action was taken during closed session.*

**8. CLOSING COMMENTS:**

**A. Claims Committee**

None.

**B. Staff**

None.

**9. ADJOURNMENT**

The Regular Meeting of the PLAN JPA Claims Committee was adjourned at 2:18 p.m.

A handwritten signature in cursive script, reading "Katie Sullivan", written over a horizontal line.

Katie Sullivan, Assistant General Manager

**March 16, 2023**

**Agenda Items 6.A.**

**CLAIMS MATTERS**

**SUBJECT: Review of PLAN JPA Governing Documents Related to Executive and Claims Committee Consolidation**

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**BACKGROUND AND HISTORY:**

At the Board of Directors meeting in June 2022, staff brought forward the idea of combining the Claims Committee with the Executive Committee for more efficient review of claims. The Board of Directors requested staff to bring the topic back in December 2022 for further discussion. At the December 2022 Board of Directors meeting, the Board, at the recommendation of the Executive and Claims Committees, authorized staff and Board Counsel to review PLAN JPA's governing documents and update to reflect the consolidation of the two committees.

Following the December 2022 Board of Directors meeting, staff and Board Counsel reviewed PLAN JPA's Bylaws, Master Program Document for the Liability Program, and Claims Policy. Updates to the governing documents have been made in redline for the Claims Committee's review and attached to this staff report.

Susan DeNardo, Litigation Manager, and Eric Dahlen, General Manager, will be present to provide an overview of the presented changes, as well as answer any questions of the Claims Committee.

**STAFF RECOMMENDATION:**

*Staff recommends the Claims Committee recommend to the Board of Directors approval of PLAN JPA's Bylaws, Master Program Document for the Liability Program, and Claims Policy, as revised, pending approval recommendation of the Executive Committee.*

**REFERENCE MATERIALS ATTACHED:**

- PLAN JPA Claims Policy – redline
- PLAN JPA Bylaws – redline
- PLAN JPA Master Program Document for the Liability Program - redline





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## Claim Policy

~~Adopted 10/8/2003~~

Revised 01/26/2023

~~Revised 6/17/2019~~

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### 1.0 Policy

It is the policy of the Board of Directors of the PLAN Joint Powers Authority (PLAN JPA) to provide policy guidance to Administrative Services Staff assigned to the PLAN JPA Program, so that all claims submitted by Members are professionally managed.

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### 2.0 Scope

This Claims Policy applies to the Claims Management and Legal Defense Programs as intended in the Liability Memorandum of Coverage Agreement.

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### 3.0 Objectives

In order to provide a system that will professionally manage claims submitted to PLAN JPA in a manner that provides Members the full benefits of the Memorandum of Coverage (MOC), this policy has the following objectives:

1. Maintain funding levels as determined by the actuary to manage claim
2. Provide experienced legal counsel to defend covered claims
3. Resolve disputes in a fair and cost-effective manner

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#### 3.1 Claims Management

To provide stability and expertise in the management of its claims and to ensure they are investigated, evaluated, and resolved in a timely and professional manner:

- The Third Party Administrator shall maintain an electronic claims management system to be used for regular claims processing by each assigned adjuster. The PLAN JPA Litigation Member shall have access to that system.
- Each Member shall designate a Claims Liaison in writing as a primary point of contact for resolving claims, otherwise the primary named representative will serve as the point of contact by default.

- The Adjuster will work closely with the Claims Liaison to establish effective management of each reported claim for the Member.
- PLAN JPA shall conduct an audit of a sample of the liability and property claims by a qualified outside firm at least once every two years.

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### 3.2 Defense Counsel List

The Board of Directors intends to maintain a Defense Counsel List of highly qualified attorneys. The Defense Counsel List may be amended by approval of the claims managing committee at any time upon request by a Member or at the Committee's discretion.

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- The objectives for all counsel on the list are to work closely with claims staff and the Member, resolve lawsuits in a timely and effective manner, and to abide by the PLAN JPA's Litigation Management Guidelines.
- Legal defense of all covered claims, not subject to a reservation of rights, may only be provided by attorneys on the latest approved Defense Counsel List.
- The TPA assigned adjusters and PLAN JPA Litigation Manager have the authority to assign counsel from the list and to enforce the Litigation Management Guidelines, provided that approval of a Member Entity's request for specific defense counsel shall not be unreasonably withheld.

### 3.3 Coverage Determination

It is PLAN JPA's policy to provide each Member the full benefits of the MOC when analyzing coverage for a claim while protecting all Members by denying payment of uncovered claims and/or providing a defense under a reservation of PLAN's right to decline indemnity.

- PLAN JPA staff, legal counsel, or designee (Coverage Counsel) shall be responsible for informing Members of coverage decisions.

A Member may accept as final, a coverage decision made by PLAN JPA staff, legal counsel, or Coverage Counsel, or any subsequent coverage decision as outlined below, or may appeal said decision by submitting a written notice of appeal within ninety (90) days of the date of the previous written determination of coverage.

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- A Member may appeal the coverage determination made by PLAN JPA staff, legal counsel, or Coverage Counsel to the claims managing committee.
- A Member may appeal the coverage determination made by the claims managing committee to the Board of Directors.

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A Member may require binding arbitration of the coverage determination made by the Board of Directors by submitting a written notice requesting such arbitration within ninety (90) days of the date of the Board of Director's written determination.

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If the Member and the PLAN JPA Litigation Manager cannot agree on an arbitrator within thirty (30) days of the Member's request for arbitration, each party will choose an arbitrator. The two arbitrators will select a third arbitrator within thirty (30) days of their appointment.

The parties shall submit their cases to the third arbitrator by written and oral evidence at a hearing. The arbitrator shall be relieved of all judicial formality and shall seek to enforce the intent of the parties.

The decision of the arbitrator shall be binding and final and not subject to appeal except for grounds of fraud or gross misconduct by the arbitrator. The award will be issued within thirty (30) days of the close of the hearings. The parties shall jointly and equally share with the other the expense of the arbitrator.

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#### 4.0 Settlement Authority

- The Litigation Manager is authorized to settle any liability or property claim with an ultimate net loss equal to or less than two hundred thousand dollars (\$200,000) in excess of the Member's remaining retained limit at the time of settlement
- All other settlements above a Member's self-insured retention shall be approved by the committee.

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#### 5.0 Reporting

The Litigation Manager will provide the claims managing committee a yearly report that summarizes open and closed losses greater than Member retentions and that describes progress in achieving its claims management goals and benchmarks.

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Members shall report all claims in accordance with the Memorandum of Coverage and PLAN Claim Handling Guidelines, including those settled within the Member's authority, to the TPA in a timely manner.

Each Member will receive a quarterly report listing the Member's open claims and activity since the last report, including all payments made to settle claims on the Member's behalf.

#### 6.0 Claim Program Standards

PLAN JPA shall seek to maintain the following standards in managing claims:

- Prompt an adequate investigation of coverage, liability, and damages
- Send initial report addressing issues above to member within 2 weeks
- Make recommendation to accept or reject a claim within 30 days in accordance with the Government Code of the State of California.
- Appropriate diary follow up to resolve outstanding issues
- Respond to all correspondence in a timely manner
- Establish adequate reserves and adjust as needed
- Clearly document all activities and thought process in resolving claim

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With respect to the criteria outlined in this policy, the claims managing committee is granted the authority to deviate from the policy when it is appropriate to do so based upon evaluation of the following criteria:

- Favorable or unfavorable claim issues that need to be addressed;
- Legal issues or legislation expected to impact a claim settlement or claims procedures; and
- Risk exposures that impact the viability of the program.

#### 7.0 Policy Adoption

The Claim Policy shall be adopted by majority vote of the Board of Directors. The policy shall be reviewed annually by the claims managing committee. Any modifications are subject to Board approval.

Reference: PLAN Claim Handling Guidelines Manual  
Litigation Management Guidelines  
Approved Defense Counsel List

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**BYLAWS**

**OF THE**

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

July 1, 2019

[Updated July 1, 2023](#)

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PLAN JPA BYLAWS

July 1, 2023

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

**ARTICLE I  
NAME**

The name of this group self-insurance program shall be Pooled Liability Assurance Network Joint Powers Authority (PLAN JPA).

**ARTICLE II  
OFFICES**

1. Principal Office. The principal office for the management of the business of PLAN JPA ("principal executive office") is located at 1750 Creekside Oaks Drive, Sacramento, CA 95833. The Board of Directors may change the principal executive office from one location to another. Any change of this location shall be noted by the Secretary on these Bylaws, or this section may be amended to state the new location.
2. Other Offices. For purposes of PLAN JPA, the jurisdictional area of PLAN JPA is the territory of the member entities. The Board of Directors may at any time establish branch or subordinate offices at any place or places where PLAN JPA is qualified to conduct its activities.

**ARTICLE III  
RECITALS AND OBJECTIVES**

1. The cities listed in Appendix I (each a "Member Entity" and collectively the "Member Entities") have entered into a Joint Powers Agreement (the "Agreement") effective as of July 1, 2018. Under the Agreement, PLAN JPA has agreed to provide liability and other lines of coverage, claims management, and risk management services to each Member Entity. In return, each Member Entity has agreed to make premium payments including Administrative and Program Premiums to PLAN JPA, and to cooperate with PLAN JPA in the claims management and risk management programs.
2. The purpose of the Agreement is to benefit the citizens of each Member Entity by establishing a stable, cost-effective self-insurance, risk sharing and risk management program (PLAN JPA) for each Member Entity.
3. The objectives of PLAN JPA shall be to benefit the citizens of each Member Entity in the area of risk management, including:
  - a. Establish overall policy in implementing the Agreement;
  - b. Receive and collect all of the Administrative Premium and Program Premiums and all other amounts required to be paid to PLAN JPA pursuant to the Agreement;
  - c. Exercise such rights and remedies conferred on PLAN JPA pursuant to the Agreement as may be necessary or convenient:
    - i. to enforce payment of the Administrative and Program Premiums and any other amounts

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PLAN JPA BYLAWS

July 1, 2023

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required to be paid to PLAN JPA,

- ii. ~~otherwise~~, to protect the interests of PLAN JPA in the event of a default by any Member Entity under the Agreement; and

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- d. The right to establish the policy for a mandatory claims management and risk management program.

- 4. PLAN JPA does not have employees. Directors, Alternate Directors, Officers, and Committee Members are employees of their respective Member Entities. Each Member Entity is therefore responsible for its own employment and post-employment obligations. PLAN JPA Members do not jointly or severally have employment liabilities as participants in PLAN JPA.

- 5. All capitalized terms shall have the meaning given to them in the Agreement.

#### ARTICLE IV

##### NONPARTISAN ACTIVITIES

PLAN JPA is formed under the California Government Code Sections 6500, et seq., for the public purposes described above, and it shall be nonprofit and nonpartisan. PLAN JPA shall not participate or intervene (including publishing or distributing statements) in any political campaign on behalf of any candidate for public office.

#### ARTICLE V

##### DEDICATION OF ASSETS

The properties and assets of PLAN JPA are irrevocably dedicated to promoting the social welfare of the citizens of the Member Entities. No part of the net earnings, properties, or assets of PLAN JPA, on dissolution or otherwise, shall inure to the benefit of any private person or individual, or any Director of PLAN JPA. On liquidation or dissolution, all properties and assets and obligations shall be ~~distributed and~~ paid over to the Member Entities.

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#### ARTICLE VI

##### MEMBERSHIP

- 1. All Prior ABAG PLAN members that duly sign the appropriate resolution and Joint Powers Agreement are included as members of PLAN JPA at its formation.
- 2. As respects any potential future Member Entities (Members), any governmental agency which is authorized to participate in a joint powers agreement under the Government Code and is located within the State of California may become a Member of PLAN JPA by agreeing to be bound by the Governing Documents and by complying with ~~all~~ the following requirements:
  - a. Submit a completed application for membership 90 days before the start of the program year. The application must be accompanied by the Board of Directors' approved fee, which shall be returned if membership is approved;
  - b. Submit a signed resolution acknowledging participation under the terms and conditions which then prevail;

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- c. Execute the Agreement then in effect and agree to be bound by any subsequent amendments to the Agreement;
  - d. Agree to be a Member for at least three consecutive fiscal years after commencement of membership;
  - e. Be accepted for membership by a two-thirds vote of the Board of Directors;
  - f. Appoint, in writing, a Director and one Alternate Director to the Board; and
  - g. Ensure the Director and Alternate Director file with the Administrator the required Fair Political Practices Commission (FPPC) forms upon assuming office, annually, and upon termination of office.
3. The Administrator shall evaluate each applicant, including its most recent audited financial statement and associated management letters, and may schedule and coordinate a safety inspection of the facilities of the applicant. The Administrator shall report the results of the evaluation and inspections to the Executive Committee who shall provide a recommendation to the Board of Directors. A two-thirds vote of the Board of Directors is required to approve the application, based upon the Executive Committee's recommendation, the application, and any evaluations, inspections, reports, or other material pertinent to the decision.

## ARTICLE VII DIRECTORS

1. Powers.
- a. General Powers. Subject to the provisions of the Government Code and any limitations in the Agreement, and these Bylaws, the business and affairs of PLAN JPA shall be managed, and all delegated powers shall be exercised, by or under the direction of the Board of Directors.
  - b. Specific powers. Without prejudice to these general powers, and subject to the same limitations, the Directors shall have the power to:
    - i. select and remove all Officers of PLAN JPA and legal counsel to PLAN JPA; prescribe any powers and duties for them that are consistent with law, the Joint Powers Agreement, and with these Bylaws; and fix their compensation, if any;
    - ii. change the principal executive office or the principal business office in the State of California from one location to another;
    - iii. borrow money and incur indebtedness on behalf of PLAN JPA, as authorized by the Joint Powers Agreement; annually set Administrative Premium, and Program Premiums within the standards and criteria set forth in the Bylaws;
    - iv. annually set an Administrative Premium allocation formula;
    - v. provide legal defense, claims management and risk management services for Member Entities; and
    - vi. collect Program Premiums and Administrative Premiums.
2. Numbers. The authorized number of Directors shall be equal to the number of Member Entities in PLAN JPA.

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PLAN JPA BYLAWS

July 1, 20~~22~~<sup>23</sup>

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3. Appointment of Directors and Alternates.

- a. The governing body of each Member Entity in PLAN JPA shall each appoint one (1) Director and one (1) voting Alternate Director (Alternate) to serve at the respective Member Entity's pleasure.
- b. Each appointment shall set forth the Director's or Alternate Director's name and his/her position with the Member Entity.

4. Alternate Directors. Alternate Directors may attend any meeting of the Board of Directors but may vote only if the Director for whom the Alternate Director serves is absent. All provisions of these Bylaws relating to Directors shall also apply to Alternate Directors.

5. Vacancies.

- a. Events Causing Vacancy. A vacancy or vacancies in the Board of Directors shall be deemed to exist on the occurrence of the following:
  - i. the death, resignation, or removal of any Director;
  - ii. the removal, dismissal or resignation of a Director from the position he/she held with the appointing Member Entity at the time of his/her appointment;
  - iii. the declaration by resolution of the Board of Directors of a vacancy of the office of a Director who has been declared of unsound mind by an order of court or convicted of a felony or has been found by final order or judgment of any court to have breached a duty under the Joint Powers Agreement or California Government Code Section 6500 et seq.; or
  - iv. the increase of the authorized number of Directors.

- b. Resignations. Except as provided in this paragraph, any Director may resign, which resignation shall be effective on giving written notice to the President or the Secretary unless the notice specifies a later time for the resignation to become effective. No Director may resign when PLAN JPA would then be left without a duly elected Director or Alternate Director in charge of its affairs.

- c. Vacancies. Pursuant to Section 3 of this Article, the Member Entity shall appoint a Director, or Alternate Director, at any time to fill any vacancy or vacancies.

- d. Reduction or Increase in Number of Directors. The authorized number of Directors shall be reduced by one (1) for each Member Entity who has withdrawn, has been expelled from PLAN JPA or whose Coverage has been canceled. The authorized number of Directors ~~shall be~~ increased by one (1) for each addition or reinstatement of a Member Entity.

- e. Interested Directors. The Directors shall be subject to the California Law pertaining to Local Agencies, including but not limited to Conflict of Interest Codes, the Fair Political Practices Act, the Ralph M. Brown Act ("Brown Act") and Government Code Section 1090.

6. Place of Meetings; Meetings by Telephone. Upon seventy-two (72) hours' notice, regular meetings of the Board of Directors may be held at any place permitted under the Brown Act. Special meetings of the Board shall be held at any place permitted by the Brown Act. Any meeting, regular or special, may be held by conference telephone or similar communication equipment, with notice as provided by the Brown Act and, so long as all Directors and members of the public participating in the meeting

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can hear those remotely participating, and a majority of the quorum of the Directors are present in person at such meeting.

7. Regular Meetings. Regular meetings of the Board of Directors shall be held at such time as shall from time to time, and no less than one time per fiscal year, and be fixed by the Board of Directors.
8. Special Meetings.
  - a. Authority to call. Special meetings of the Board of Directors for any purpose may be called at any time by the President, Vice President, the Secretary, or any three (3) Directors.
9. Notice.
  - a. Manner of Giving -- Regular Meetings. Notice of the time and place of regular meetings shall be given by posting at the location of the meeting in compliance with the Brown Act and to each Director by one of the following methods:
    - i. by personal delivery of written notice;
    - ii. by first-class mail, postage paid;
    - iii. by facsimile; or
    - iv. by email.
  - b. Manner of Giving -- Special Meetings. Notice of the time and place of special meetings shall be in compliance with the Brown Act and given to each Director by any of the methods set forth in Subsection 9(a), or by telephone communication, either directly to the Director or to a person at the Director's office who would reasonably be expected to communicate such notice promptly to the Director.
  - c. Address. All such notices shall be given or sent to the Director's address or telephone number as shown on the records of PLAN JPA.
  - d. Notice Contents. The notice shall state the time and place for the meeting, and the purpose(s) of the meeting.
  - e. Ralph M. Brown Act. The noticing and conduct of all meetings shall comply with the [Brown Act](#).
10. Quorum. A majority of the authorized number of Directors shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 11 of this Article VII. Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors
11. Adjournment. A majority of the Directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place as provided in the Brown Act.
12. Reimbursement. Directors and members of committees may receive such reimbursement of expenses as may be determined by resolution of the Board of Directors to be just and reasonable.
13. Delegation of Powers. The Board of Directors may delegate any of its powers.

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**ARTICLE VIII  
COMMITTEES**

1. Committees of Directors. In addition to the ~~Risk Management Committee~~ and Finance Committee, the Board of Directors may, by resolution adopted by a majority of the Directors then in office, designate one (1) or more committees, each consisting of two (2) or more Directors, to serve at the pleasure of the Board. Any committee, to the extent provided in the resolution of the Board, shall have all the authority of the Board, except that no committee, regardless of Board resolution, may:
  - a. Take any final action on matters which, under the Law governing Joint Powers Authorities or California Law regarding Local Agencies, requires approval of a majority of all the Directors;
  - b. Approve reimbursements of the Directors for serving on the Board or on any committee;
  - c. Amend or repeal bylaws or adopt new bylaws;
  - d. Amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable or repealable;
  - e. Appoint any other committees of the Board of Directors or the members of these committees; or
  - f. Approve any transaction (1) to which PLAN JPA is a party and one (1) or more Directors have a material financial interest; or (2) between PLAN JPA and one (1) or more of its Directors or between PLAN JPA or any person or entity in which one (1) or more of its Directors have a material financial interest.
2. Meetings and Action of Committees. Meetings and action of committees shall be governed by, and held and taken in accordance with, the provisions of Article VII of these Bylaws, concerning meetings of Directors, with such changes in the context of these Bylaws as are necessary to substitute the committee and its members for the Board of Directors and its members, except that the time for regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the Executive Committee. Special meetings of committees may also be called by the President or committee chair. Notice of special meetings of committees shall also be given to any and all Alternate Directors, who shall have the right to attend all meetings of the committee. Minutes shall be kept of each meeting of any committee and shall be filed with the corporate records. The Board of Directors may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.
3. Executive Committee. A standing committee consisting of nine Directors: ~~The President and Vice President, the Chair of each standing committee, or if the chair of a standing committee is the President or Vice President of the Board, a representative of such standing committee appointed by the committee and five at-large Directors of the Board elected by the Board. The Executive Committee may exercise all powers of the Board necessary to further the timely and orderly conduct of business, except it may not:~~
  - a. Set premiums;
  - b. Select or remove Officers or legal counsel to PLAN JPA, except in cases of emergency or where the legal counsel is unavailable or unable to perform his or her duties until the next meeting of the

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Board of Directors. Any selection of legal counsel shall be subject to ratification by the Board of Directors at its next meeting;

c. Borrow money; or

d. Amend these Bylaws or the Joint Powers Agreement.

4. Risk Management Committee. A standing committee consisting of no less than three (3) Directors appointed by the Board shall be charged with the duty and responsibility of:

a. Reviewing and making recommendations to the Board for risk management programs, including but not limited to, voluntary and mandatory program changes in Member Entity activities, and restrictions on coverage; and

b. Reviewing and making recommendations to the Board on applications for admissions, expulsion, withdrawal notices and proposals for cancellation, including but not limited to, the terms and conditions under which such admissions, withdrawals, expulsions and cancellations are implemented.

5. Finance Committee. A standing committee consisting of no less than three Directors appointed by the Board shall be charged with the duty and responsibility of reviewing and

**Deleted:** <#>Claims Committee (Liability). A standing committee consisting of no less than three (3) Directors appointed by the Board shall be charged with the duty and responsibility of:¶  
Reviewing and authorizing all payment of settlements which exceed a Member Entity's deductible or upon request by PLAN JPA or Member Entity,¶  
Establishing a defense counsel list, and hearing the initial appeal on all staff determinations of coverage for, and settlement of, a third party claim against a Member Entity.¶

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making recommendations to the Board on the results of PLAN JPA's annual financial audit, reviewing and making recommendations to the Board regarding PLAN JPA's investments and Investment Policy.

## ARTICLE IX OFFICERS

1. Officers. The officers of PLAN JPA shall be the President, Vice President, Secretary and a Treasurer. All officers, with the exception of the Secretary, shall be Directors.
2. Election of Officers. At the first meeting of the Board of Directors, and at each annual meeting thereafter, nominations for the officers shall be made and seconded by a Director. If more than two (2) names are received in nomination for any one office, balloting shall occur until a nominee receives a majority of the votes cast; provided that after the first ballot the nominee receiving the fewest votes shall be dropped from the balloting. Each officer shall serve a two (2) year term. Any officer except the President and Vice President may succeed himself/herself and may serve any number of consecutive or non-consecutive terms. The President and Vice President may succeed himself/herself only if his/her first term was filled as a result of a vacancy in the office.
3. Removal of Officers. An Officer may be removed, with or without cause, by a two-thirds (2/3) vote of the Board of Directors at a regular or special meeting.
4. Vacancies. Any vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled for the balance of the vacated term in the manner prescribed in these Bylaws for regular appointments to that office; provided, however, that such vacancies may be filled at any regular or special meeting of the Board of Directors.
5. Resignation of Officers. Any Officer may resign at any time by giving written notice to the President or Secretary. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of PLAN JPA under any contract to which the Officer is a party.
6. Responsibilities of Officers and Assigned Positions.
  - a. President of the Board. The President of the Board shall preside at meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him/her by the Board of Directors or prescribed by the Bylaws.
  - b. Vice President of the Board. The Vice President of the Board shall fulfill all the duties of the President in his/her absence.
  - c. Secretary. The General Manager for PLAN JPA shall serve as the Secretary and shall be appointed by the President. The Secretary may assign certain responsibilities to an Assistant Secretary of his/her choosing. The Secretary shall attend to the following:
    - i. Book of minutes. The Secretary shall keep or cause to be kept, at the principal executive office or such other place as the Board of Directors may direct, a book of minutes of all meetings and actions of Directors and committees of Directors, with the time and place of

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holding, whether regular or special, and, if special, how authorized, the notice given, the names of those present at such meetings and the proceedings of such meetings.

- ii. Notices, seal and other duties. The Secretary shall give, or cause to be given, notice of all meetings of the Board of Directors required by the Bylaws to be given. He or she shall keep the seal of PLAN JPA, if any, in safe custody. He or she shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.
- d. Treasurer. The Treasurer may assign responsibilities to an Assistant Treasurer, who shall be the Finance Manager for PLAN JPA. Together, the Treasurer and Assistant Treasurer shall attend to the following:
  - i. Books of account. Keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the PLAN JPA, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements. The books of account shall be open to inspection by any Director at all reasonable times.
  - ii. Deposit and disbursement of money and valuables. Deposit all money and other valuables in the name and to the credit of PLAN JPA with such depositories as may be designated by the Board of Directors; shall disburse the funds of PLAN JPA as may be ordered by the Board of Directors; shall render to the President and Directors, whenever they request it, an account of all of his/her transactions as Treasurer and Assistant Treasurer and of the financial condition of PLAN JPA; and shall have other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

## ARTICLE X

### PURCHASE OF INSURANCE

Purchase of Coverage. In conformance with the procedures and criteria set forth in Article III of these Bylaws, the Board of Directors may cause PLAN JPA to purchase commercial insurance or reinsurance or terminate commercial insurance or reinsurance upon a majority vote of the membership of the Board of Directors.

## ARTICLE XI

### INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

1. Definitions. For the purpose of this Article, "agent" means any person who is or was a Director, Officer, employee, or other agent of PLAN JPA, or is or was serving at the request of PLAN JPA as a director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a director, officer, employee, or agent of a foreign or domestic corporation that was a predecessor of this PLAN JPA or of another enterprise at the request of the predecessor ABAG PLAN; "proceeding" means any threatened, pending, or completed action

or proceeding, whether civil, criminal, administrative, or investigative; and "expenses" includes, without limitation, all attorneys' fees, costs, and any other expenses incurred in the defense of any claims or proceedings against an agent by reason of his position or relationship as agent and all attorneys' fees, costs, and other expenses incurred in establishing a right to indemnification under this Article.

2. Successful Defense by Agent. To the extent that an agent of PLAN JPA has been successful on the merits in the defense of any proceeding referred to in this Article, or in the defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection with the claim. If an agent either settles any such claim or sustains a judgment rendered against him or her, then the provisions of Sections 3 through 5 of this Article shall determine whether the agent is entitled to indemnification.
3. Actions Brought by Persons Other Than PLAN JPA. Subject to the required findings to be made pursuant to Section 5 of this Article, below, PLAN JPA shall indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding other than an action brought by, or on behalf of, PLAN JPA or the Attorney General for any breach of duty relating to assets held by PLAN JPA, by reason of the fact that such person is or was an agent of PLAN JPA, for all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with the proceeding.
4. Action Brought by or On Behalf of PLAN JPA.
  - a. Claims settled out of court. If an agent settles or otherwise disposes of a threatened or pending action brought by or on behalf of PLAN JPA, with or without court approval, the agent shall receive no indemnification for either amounts paid pursuant to the terms of the settlement or other disposition or for any expenses incurred in defending against the proceeding, unless it is settled with the approval of the Attorney General.
  - b. Claims and suits awarded against agent. PLAN JPA shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action brought by or on behalf of PLAN JPA by reason of the fact that the person is or was an agent of PLAN JPA, for all expenses actually and reasonably incurred in connection with the defense of that action, provided that both of the following are met:
    - i. the determination of good faith conduct required by Section 5, below, must be made in the manner provided for in that section; and
    - ii. upon application, the court in which the action was brought must determine that, in view of all the circumstances of the case, the agent should be entitled to indemnity for the expenses incurred. If the agent is found to be so entitled, the court shall determine the appropriate amount of expenses to be reimbursed.
5. Determination of Agent's Good Faith Conduct. The indemnification granted to an agent in Sections 3 and 4 of this Article above is conditioned on the following:
  - a. Required standard of conduct. The agent seeking reimbursement must be found, in the manner provided below, to have acted in good faith, in a manner he/she believed to be in the best interest

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of PLAN JPA, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use in similar circumstances. The termination of any proceeding by judgment, order, settlement, conviction, or on a plea of noel contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or in a manner which he/she reasonably believed to be in the best interest of PLAN JPA or that he/she had reasonable cause to believe that his/her conduct was unlawful. In the case of a criminal proceeding, the person must have had no reasonable cause to believe that his/her conduct was unlawful.

b. Manner of determination of good faith conduct. The determination that the agent did act in a manner complying with Paragraph (a) above shall be made by:

- i. the Board of Directors by a majority vote of a quorum consisting of Directors who are not parties to the proceeding; or
- ii. the court in which the proceeding is or was pending. Such determination may be made on application brought by PLAN JPA or the agent or the attorney or other person rendering a defense to the agent, whether or not the application by the agent, attorney, or other person is opposed by PLAN JPA.

6. Limitations. No indemnification or advance shall be made under this Article, except as provided in Sections 2 or 5(b)(iii), above, in any circumstance when it appears:

- a. That the indemnification or advance would be inconsistent with a provision of the Articles or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or
- b. that the indemnification would be inconsistent with any condition expressly imposed by a court in approving a settlement.

7. Advance of Expenses. Expenses incurred in defending any proceeding may be advanced by PLAN JPA before the final disposition of the proceeding on receipt of an undertaking by or on behalf of the agent to repay the amount of the advance unless it is determined ultimately that the agent is entitled to be indemnified as authorized in this Article.

8. Contractual Rights of Non-directors and Non-officers. Nothing contained in this Article shall affect any right to indemnification to which persons other than Directors and Officers of PLAN JPA, or any subsidiary hereof, may be entitled by contract or otherwise.

9. Insurance. The Board of Directors may adopt a resolution authorizing the purchase and maintenance of Director's and Officer's insurance, or any other insurance, on behalf of any agent of PLAN JPA against any liability deemed appropriate by the Board.

## ARTICLE XII RECORDS AND REPORTS

1. Maintenance of Corporate Records. PLAN JPA shall keep:

- a. Adequate and correct books and records of account; and
- b. Minutes in written form of the proceedings of its Board, and committees of the Board.

All such records shall be kept at PLAN JPA's principal executive office, or if its principal executive office is not in the State of California, at its principal business office in this state.

2. Inspection Rights.
  - a. Any Member Entity may inspect the accounting books and records and minutes of the proceedings of the Board and committees of the Board, at any reasonable time, for a purpose reasonably related to such person's interest.
  - b. Any inspection and copying under this section may be made in person or by an agent or attorney or the entity entitled thereto and the right of inspection includes the right to copy and make extracts.
3. Maintenance and Inspection of Articles and Bylaws. PLAN JPA shall keep at its principal executive office, or if its principal executive office is not in the State of California, at its principal business office located in this state, the original or copy of the Articles and Bylaws as amended to date, which shall be open to inspection by any Member Entity at all reasonable times during office hours. If the principal executive office of PLAN JPA is outside the State of California and PLAN JPA has no principal business office in this state, the Secretary shall, on the written request of any member of the governing body of a Member Entity furnish to that member a copy of the Articles and Bylaws as amended to date.
4. Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of every kind and the physical properties of PLAN JPA. This inspection by a Director may be made in person or by an agent or attorney, and the right of inspection includes the right to copy and make extracts of documents.
5. Annual Report.
  - a. Not later than one hundred twenty (120) days after the close of PLAN JPA's fiscal year, the Board shall cause an annual report/financial audit prepared by a certified public accountant to be sent to the governing body of each Member Entity. Such report shall contain the following information in reasonable detail:
    - i. the assets and liabilities, including the trust funds, of the PLAN JPA as of the end of the fiscal year;
    - ii. the principal changes in assets and liabilities, including trust funds, during the fiscal year;
    - iii. the revenue or receipts of PLAN JPA, both unrestricted and restricted to particular purposes, for the fiscal year; and
    - iv. the expenses or disbursements of PLAN JPA, for both general and restricted purposes, during the fiscal year.
  - b. The report required by this Section shall be accompanied by any report thereon of independent accountants, or, if there is no such report, by the certificate of an authorized Officer of PLAN JPA that such statements were prepared without audit from the books and records of PLAN JPA.
6. Fiscal Year. PLAN JPA's fiscal year shall be from July 1 to June 30.

**ARTICLE XIII**  
**CONSTRUCTION AND DEFINITIONS**

Unless the context requires otherwise, the general provisions, rules of construction, and ~~definitions in~~ the California Government Code Section 65000, et seq. and the California Government Code related to Local Agencies shall govern the construction of these Bylaws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, the singular number includes the plural, the plural number includes the singular, the term "person" includes both PLAN JPA and a natural person and any capitalized term not defined in these Bylaws shall have the meaning ascribed to them in the Agreement.

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**ARTICLE XIV**  
**AMENDMENTS**

1. Amendment by Directors. Subject to the limitations set forth below, the Board of Directors may adopt, ~~amend~~, or repeal Bylaws. Such power is subject to the following limitations:
- a. The Board of Directors may not amend a bylaw provision fixing the authorized number of directors or the minimum and maximum number of directors.
  - b. If any provision of these Bylaws requires the vote of a larger proportion of the Directors than otherwise required by law, such provision may not be altered, amended or repealed except ~~by vote~~ of such larger number of Directors.
  - c. The Board of Directors may not delete or amend Bylaw provisions requiring compliance with the Agreement except as provided in the Agreement.

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## MASTER PROGRAM DOCUMENT – LIABILITY

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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. **Member Contributions** 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. **Self-Insured Retention (SIR)** shall mean the amount that the **Member Entity** must pay (or cause to be paid) before **PLAN** is obligated to pay any amount under the terms of the PLP Memorandum of Coverage.
11. **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 Limit of Coverage** and obtain excess coverage for the amount of the loss which exceeds the Authority's Limit of Coverage 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 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**. 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. MEMBER CONTRIBUTIONS

1. The **Administrator**, in conjunction with an actuary, shall establish rates and **Member Contributions**, 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 **Member Contributions** 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) 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 Member Contributions. 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 the prior five completed years;

#### D. EXPERIENCE MODIFICATION

1. Each **Participant** shall be evaluated each year for an experience modification adjustment that shall be applied to the **Member**

**Contributions.** 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 2022/23, loss data from July 1, 2016 through June 30, 2021, valued at December 31, 2021 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 the **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 plus or minus thirty (30) percent.

#### 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 program years (after the five years eligible for dividend calculation) have negative equity, 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 **Limit of Coverage**.

## 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, 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 **Member Contributions** 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 **Member Contributions** 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.

## 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 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;
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
20. 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 Executive Committee shall have the authority to settle any claim with an ultimate net loss equal to or less than the **Limit of Coverage** 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.

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4. The **Board** retains unto itself the authority to approve settlement of all other claims. However, the Executive Committee shall periodically review such claims and may make recommendations to the Board.

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#### D. DISPUTES REGARDING MANAGEMENT OF 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 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 **Member Contributions** 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. PARTICIPANT DUTIES

1. The **Participants** shall provide payroll, using the State DE-9 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, regarding underwriting activities of the **Authority**.
4. Each year the **Authority** shall bill **Participants** for a liability **Member Contributions** 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 Member Contributions 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 Member Contributions, premiums, assessments, or other charges;
  - iv. Frequent late payment of Member Contributions, 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 **Member Contributions** 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**.

## **APPENDIX A**

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

March 16, 2023

Agenda Items 8.A.

**GENERAL MANAGER'S REPORT**

**SUBJECT: Report from PLAN JPA's General Manager**

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**BACKGROUND AND HISTORY:**

PLAN JPA's General Manager, Eric Dahlen, will be in attendance and will be discussing the following:

- Status of PLAN's Third-Party Administrator and a requested stewardship report for the March 2023 Special Board of Directors meeting.

**STAFF RECOMMENDATION:**

None.

**REFERENCE MATERIALS ATTACHED:**

None.