

REQUEST FOR PROPOSAL
LIABILITY AND PROPERTY THIRD PARTY CLAIMS ADJUSTING SERVICES
FOR
POOLED LIABILITY ASSURANCE NETWORK JOINT POWERS AUTHORITY
(PLAN JPA)

RETURN PROPOSALS TO:

Rebecca Mendenhall, President, PLAN JPA
RMendenhall@cityofsancarlos.org

DEADLINE FOR FILING:

June 17, 2024

**Electronic Proposals Preferred.*

REQUEST FOR PROPOSAL
LIABILITY AND PROPERTY THIRD PARTY CLAIMS ADJUSTING SERVICES
FOR

Pooled Liability Assurance Network JPA

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PLAN JPA

REQUEST FOR PROPOSAL

LIABILITY AND PROPERTY THIRD PARTY CLAIMS ADJUSTING SERVICES

I. BACKGROUND AND HISTORY

The Board of Directors of the Pooled Liability Assurance Network (PLAN) is requesting proposals from qualified third-party claims adjusting firms (TPAs) to provide liability and property claims adjusting services for its self-funded Pooled Liability and Pooled Property Programs.

PLAN JPA has its roots dating back to 1986 as ABAG PLAN Corporation, originally developed as a nonprofit public benefit corporation organized exclusively for the promotion of the social welfare of the citizens of the San Francisco Bay area. In 2018, the Board of Directors decided to dissolve the corporation in favor of the creation of a Joint Powers Authority, PLAN JPA.

Pooled Liability Assurance Network, a Joint Powers Authority (PLAN) was established to provide and administer property and liability insurance and self-insurance services for member cities. PLAN membership includes 28 municipalities located in the bay area of Northern California. PLAN uses self-insurance, traditional insurance carriers and pooled self-insurance to provide financial coverage for the membership. In addition, PLAN has developed effective risk management programs to reduce the amount and frequency of losses, to share the losses on a self-insured basis, and to jointly purchase and provide administrative and other services such as claims adjusting, data processing, risk management, loss prevention, accounting services, actuarial services, and legal services in connection with the program.

Within PLAN's 28 members, there is a projected payroll of \$532,374,900 and a reported Total Insured Value of \$3,790,625,716. This includes a payroll range from the smallest member at \$2,183,800 to the largest member at \$67,897,000.

Sedgwick Claims Management, Inc. has provided Liability claims adjusting services to PLAN since 2014 with the original party to the agreement being ABAG Plan Corporation and later assigned to PLAN JPA. The contract is currently active under its third amendment and is set to expire on June 30, 2026.

PLAN has approximately 150 new claims each year. PLAN has approximately 220 open claims at any one time. The number of newly opened claims approximates the number of claims being closed in any one program year. There is no expectation for the average number of open claims to increase or decrease significantly. A summary of the claims activity as of December 31, 2024, has been provided in Appendix C.

PLAN provides General Liability, Auto Liability, and Errors & Omissions coverage for its members in excess of the Members' retained limit, or Self-Insured Retention (SIR), up to \$1,000,000 per occurrence. Each Member maintains responsibility for the portion of every loss

that falls within their SIR, ranging from \$25,000 to \$250,000. PLAN is also a member of the California Affiliated Risk Management Authorities (CARMA), a risk sharing joint powers authority. When losses exceed the \$1,000,000 per occurrence limit, CARMA provides coverage up to \$10,000,000. PLAN maintains additional coverage utilizing five (5) excess policies providing access to \$35,000,000 per occurrence coverage.

All new PLAN member losses (including claim incident reporting) are to be reported immediately to the Third-Party Administrator. 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 serious case (including multiple claims or suits arising out of one *Occurrence*), in which the exposure may exceed fifty (50%) percent of the PLAN Member's retained limit based the claim adjuster's professional assessment (adding indemnity and legal reserve together):

- a) A demand or demands totaling fifty (50%) percent of the PLAN Member's remaining retained limit or more;
- b) Title 42 USC 1983 matters alleging a violation of civil rights;
- c) Non-Employment Sexual Abuse conduct;
- d) Any claim or case in which a complaint has been filed and served on the PLAN Member;
- e) Death;
- f) Paralysis, paraplegia, quadriplegia;
- g) Loss of use of any sensory organ;
- h) Amputation;
- i) Spinal cord or brain injury;
- j) Third degree burns involving ten percent or more of the body;
- k) Nerve injury and/or neurological deficit;
- l) Loss of use of any body function,
- m) Substantial disability or disfigurement; or
- n) Loss of work time of six months or more.

The members of the PLAN, the TPA, and the Litigation Manager actively monitor all claims. This requires the Third-Party Administrator to maintain open communications and a good rapport with all parties. The PLAN has formally approved Claim Handling Guidelines (See Appendix A) that the TPA firm and the Litigation Manager are tasked with enforcing.

Regarding the Pooled Property Program, PLAN has a risk sharing All-Risk Property pool that covers the member entities' buildings, building contents, and vehicles parked on the entities' premises. In most cases, the coverage provides replacement cost without reduction for depreciation. This program provides coverage from the Members' deductible of \$5,000 to the Alliant Property Insurance Program (APIP) deductible of \$500,000 for the pool. Through APIP, the coverage limit is equal to the scheduled total insured values of the members' property for most exposures; however, there are sub-limits for some exposures. The APIP portion of the program also provides coverage for the sudden and accidental breakdown of Boiler & Machinery equipment. This is a pass-through coverage provided through APIP.

II. OBJECTIVES AND SCOPE OF WORK TO BE PERFORMED

The objective of this RFP is to select a Liability and Property Third Party Claims Adjusting Company (TPA). The incumbent may be bidding. A written contract will be executed by both the PLAN JPA and the selected firm. Such contract will be for a **three-year period** with two (2) one-year extension options. There shall be provisions within the contract providing for termination with and without cause. The contract will also include detailed performance standards and should be based on a **fixed fee annual price with pre-determined annual increases**. See Appendix D for a sample model contract.

The PLAN JPA is very interested in maintaining a high level of communication between the TPA and the members, the Litigation Manager and defense counsel. The proposal should be priced in such a way to ensure this can be accomplished.

The responsibilities of the claims adjusting service is divided into three categories: claims administration, support of the Litigation Manager, and reporting of claims activities. PLAN JPA has adopted the following best practices to promote effective claims administration, litigation management, and reporting of claims activities.

A. *Claims Administration*

The claims adjusting firm shall provide PLAN JPA with sufficient qualified personnel, including at least one senior claims adjuster, to meet the responsibilities efficiently and effectively as defined below and any other duties incidental, or in addition, to those responsibilities. The claims adjusting firm shall conform to the procedures outlined in the PLAN JPA Claim Handling Guidelines and Best Practices Litigation Management Guidelines (Appendix A). The senior claims adjuster shall have a minimum of three years experience in adjusting liability claims for public entities. The claims adjusting firm shall also provide a supervisor/account manager who shall oversee the servicing of the PLAN JPA's claims and act as a liaison to the PLAN JPA Litigation Manager, who is proposed to be retained. The supervisor/account manager shall have at least six years experience in adjusting liability claims, five of which involved adjusting liability claims for public entities. No adjuster or supervisor/account manager shall service the PLAN JPA's account without prior written approval by the PLAN JPA.

The responsibilities of the claims adjusting firm shall include, but are not limited to, the following:

1. Establish and maintain a file for each claim reported, to include a diary review system by both the examiner and supervisor; statistical data for each claim should be stored electronically and shall include all data required to comply with federal and state requirements **including Medicare secondary**

payer laws and regulations. E-mail communications with the members and PLAN JPA are preferred.

2. Provide comprehensive investigative services;
3. Periodically, determine potential liability and establish, review, and update reserves for each reported accident and advise the member and PLAN JPA of any changes as they occur;
4. Notify the PLAN JPA Litigation Manager of any claim as required by the Memorandum of Coverage (MOC) and coordinate with the members and PLAN JPA Litigation Manager in the defense, settlement, and payment of claims;
5. Provide the members with a recommendation to accept or reject a claim within the statutory period in the California Government Code;
6. Provide immediate notification to the members, and if appropriate the PLAN JPA Litigation Manager of offers to settle;
7. Obtain releases and other necessary forms from all appropriate parties upon settlement of a claim;
8. Upon the members' requests, assist with its preparation for appearances in small claims court;
9. Prepare and issue checks (from the approved PLAN JPA trust account), drafts, or other documents in the payment of all claims activities, including litigation costs, miscellaneous investigative costs, and claim clean up costs, with copies sent to the members;
10. Obtain approval for issuance of checks for claims, claim expenses, litigation expenses, and settlements, drafts, or other documents in the payment of claims, where needed;
11. Maintain complete records of payments from an approved trust account, established by the Administrator on behalf of the PLAN JPA for the purpose of paying all claims related costs.
12. Determine any potential to tender a claim to third parties and the feasibility of subrogation, and take appropriate steps to subrogate, where such action is appropriate;
13. Promptly close each claim as soon as possible;

14. Make available time, files, and necessary staff for meetings with the members and PLAN JPA and attendance at applicable meetings (City Council, PLAN JPA Executive Committee, or PLAN JPA Board of Directors) for settlement authority, claim resolution strategy, and periodic claim audits; and

B. Support of the Litigation Manager

The claims adjusting firm shall assist in the implementation and conform to the procedures outlined in the Litigation Management Guidelines formally approved by Resolution of the PLAN JPA (see Appendix B). The duties of the claims adjusting firm shall be to assist the PLAN JPA Litigation Manager and include, but are not limited to:

1. Monitoring defense counsel and assisting in the implementation of the PLAN JPA Litigation Management Guidelines;
2. With input from the members and the Litigation Manager, assigning the defense of litigated cases to the defense firm selected (PLAN JPA maintains a defense panel of approved firms);
3. Assisting defense counsel, at the direction of the members and the PLAN JPA Litigation Manager, in obtaining facts or circumstances of a claim, including assistance in answering interrogatories;
4. Supplying and collecting the case analysis and performance evaluation forms from the defense firms;
5. Reviewing legal bills for accuracy, for compliance with the Litigation Management Guidelines, and use of cost-effective processes; and
6. Maintaining, in coordination with the members and the Litigation Manager, an evaluation file on each defense firm with respect to each defense assignment.

C. Reporting of Claims Activity

Provide a monthly statistical report for each line of coverage which shows all claims having activity, including claimant name, nature/type/cause of injury/loss, date of loss, status, loss/expense paid and reserved amounts, with monthly and year-to-date totals. Report should include a brief narrative of the actions to date and future recommended actions. A guide to any and all abbreviations used in any of the reports shall be provided to the members and the PLAN JPA. Reports shall include all claims meeting the members' and the PLAN JPA's reporting criteria.

In addition to the monthly statistical report, the adjusting firm will provide a monthly payment register showing all payments issued, payee, voucher number, voucher date, and claimant name, if applicable.

Upon the request of the member or the PLAN JPA, the adjusting firm shall also provide special reports on claims, in detail or summary, sorted or queried by any, or any combination, of the fields at no additional cost. All reports shall be provided in a Microsoft Excel format or PDF as requested by the member.

Upon the request of the member or the PLAN JPA, the adjusting firm shall also provide credentials to access the Risk Management Information System for real time reporting and inquiry access on their claims.

The adjusting firm shall also cooperate and assist with information services “mapping” to coordinate the dissemination of information into any data management system implemented by PLAN JPA.

III. PROPOSAL REQUIREMENTS

Each proposer shall submit a complete proposal with all information requested. The content of the proposal will be as follows:

A. Cover Letter

The cover letter will include the company name, address, and telephone number of the authorized person to be used as the contact.

The letter will indicate whether the proposer is an individual, partnership, or corporation. It must be signed by the individual, partner, or an officer or agent authorized to bind the firm. A corporation submitting a proposal may be required to furnish a certificate as to its corporate existence and satisfactory evidence as to the officers authorized to execute the contract on behalf of the corporation.

B. Table of Contents

C. Company Qualifications

This section should include:

1. An explanation of the knowledge and experience of the firm and its personnel in serving self-insured public entities in California. (Limited to one page);
2. A description of at least two similar or related contracts under which the proposer is currently providing services;
3. An explanation of the experience and qualifications of staff.
 - List the staff assigned, title, and responsibilities as it would relate to this project;
 - Include resumes of each staff assigned; and
 - Identify appropriate certifications; and
4. A list of at least three public entity client references, preferably located in Northern California.

D. Work Plan

This section should contain the proposer's work plan for providing the services required. The following work plan must, at a minimum, address the following:

1. The general approach to providing claims administration services the proposer will employ;
2. Confirmation the proposer will comply with the attached PLAN JPA Claim Handling Guidelines and Best Practices (See Appendix A) and the PLAN JPA Litigation Management Guidelines (Appendix B)
3. Alternatively, the proposer must clearly specify how services will vary from these standards;
4. An explanation of the process of reporting and ability to generate a variety of Risk Management Information Systems RMIS reports. Discussion should include the ability of the members and the PLAN JPA to access claims information through Windows-based or web-based programs;
5. An explanation of the adjusters assigned:
 - Identify adjuster(s)
 - Location of service
 - Current case load;
 - Maximum case load for this assignment per adjuster and supervisor
6. An indication for each staff assigned as to the relative time they will spend on PLAN JPA, i.e., will they be dedicated to the members and PLAN JPA or will they have additional client responsibilities;
7. An explanation and project timeline describing how the conversion of historical data from the current claims administration service provider, including retrieval of files, will occur; and
8. An indication of the proposers' ability to fulfill the role of the reporting agent for the PLAN JPA regarding Medicare secondary payer laws/regulations and SCHIP act reporting. Whether such support service is included in the proposed contract pricing should be indicated. If the proposer is not equipped to fulfill the role of reporting agent to the PLAN JPA, please propose how this role may be fulfilled, by what 3rd party service provider, and at what additional cost.

9. Include an example of a monthly statistical report for each line of coverage which shows all claims having activity, including claimant name, nature/type/cause of injury/loss, date of loss, status, loss/expense paid and reserved amounts, with monthly and year-to-date totals.

E. Cost

Please quote an annual service fee, clearly stating what services and expenses are included in the fee. Identify what services, if any, will require additional charges, fees, or costs. Any costs not identified in the proposal shall not be reimbursed by the PLAN JPA.

IV. INSURANCE REQUIREMENTS

The proposer must agree to indemnify, hold the PLAN JPA and its members harmless, and defend the PLAN JPA and its members from all claims and legal action for damages arising from their performance under the agreement.

Prior to and during the performance of the contract, the proposer shall maintain at its own expense the following minimum insurance coverage:

1. Commercial General Liability insurance in an amount no less than \$1,000,000.
2. Business Automobile Liability insurance in an amount no less than \$1,000,000 per accident.
3. Workers' Compensation insurance meeting all statutory benefit requirements of the Labor Code of the State of California and Employers Liability insurance with a minimum of \$1,000,000 per claim.
4. Professional Errors & Omissions insurance with a minimum of \$2,000,000 limit per claim.
5. Crime bond covering the misappropriation of PLAN JPA and/or member funds.
6. Cyber-liability coverage in an amount no less than \$1,000,000.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the PLAN JPA. If necessary, at the option of the PLAN JPA either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the PLAN JPA, its officers, officials, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the PLAN JPA guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The PLAN JPA, its Members, and all of their officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the PLAN JPA, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the PLAN JPA, its

officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the PLAN JPA.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the PLAN JPA.

Verification of Coverage

Proposer shall furnish the PLAN JPA with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the PLAN JPA or on other forms provided those endorsements conform to PLAN JPA requirements. All certificates and endorsements are to be received and approved by the PLAN JPA before work commences prior to execution of a service agreement. The PLAN JPA reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

V. PROCESS FOR SUBMITTING PROPOSALS

All proposals must be submitted in PDF file format.

❖ Content of Proposal

The proposal must be submitted using the format as indicated in [Section III - Proposal Requirements](#).

❖ Preparation of Proposal

Each proposal shall be prepared simply and economically, avoiding the use of elaborate promotional material beyond those sufficient to provide a complete, accurate and reliable presentation.

❖ Number of Proposals

Submit one (1) PDF file format copy of your proposal in sufficient detail to allow for thorough evaluation and comparative analysis.

❖ Submission of Proposals

Only those proposals which are complete and delivered by 5:00 p.m. on June 17, 2024, shall be considered.

Address all proposals to:

ATTN: Rebecca Mendenhall, President, PLAN JPA
RMendenhall@cityofsancarlos.org

VI. SELECTION PROCESS

The PLAN JPA will review the proposals submitted. The firms whose proposals are selected as finalists for consideration may be asked to appear, at their own expense, before an evaluation panel to discuss their proposal.

All proposals, whether selected or rejected, shall become the property of the PLAN JPA. Costs of preparation of proposals will be borne solely by the proposer. Proposals may be submitted electronically.

PLAN JPA may use some or all of the following criteria in its evaluation and comparison of proposals submitted. The criteria listed are not necessarily an all-inclusive list. The order in which they appear is not intended to indicate their relative importance:

- Compliance with RFP requirements
- Understanding of Project
- Methods and approach (including timeline) described to accomplish the Scope of Work of this RFP.
- Recent experience in conducting work of similar scope, complexity, and magnitude for other public agencies.
- Educational background, work experience, most importantly public sector work experience, and directly related consulting experiences.
- Price
- References from local clients with particular emphasis on local government.

PLAN may also contact and evaluate the bidder's references; contact any bidder to clarify any response; contact any current users of a bidder's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process. The evaluation committee shall not be obligated to accept the lowest priced proposal but shall make an award in the best interests of PLAN JPA.

Award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing vendors unless an agreement is reached. If contract negotiations cannot be concluded successfully, PLAN may negotiate a contract with the next highest scoring vendor or withdraw the RFP. Nothing in this RFP shall be construed to obligate the PLAN JPA to negotiate or enter a contract with any particular TPA. This RFP shall not be deemed to be an offer to contract or to enter into a binding contract or agreement of any kind.

Request for Proposal for Liability and Property Third Party Claims Adjusting Services

May 20, 2024

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Listed below is an anticipated timetable:

05/17/2024	Dissemination of Request for Proposals
06/17/2024	Proposals Due
06/17/2024 – 07/16/2024	Evaluation of Proposals
07/17/2024	Ad Hoc Committee to select interviewees
08/22/2024	Interview of Prospective Bidders and Selection of Firm
08/23/2024	Inform Bidders of Selection and Negotiate Contract
09/2024	Contract Formally Approved by Board
Determined by Selected Firm	Data Transfer and Mapping
01/01/2025	Begin Engagement

Questions regarding this Request for Proposal or the PLAN JPA liability and property claims programs may be directed to:

Rebecca Mendenhall, , PLAN JPA, President

RMendenhall@cityofsancarlos.org

APPENDIX A – PLAN JPA Claims Handling Guidelines



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 TPA by email to xxx.

Liability Claims Team Lead xxx will assign the claims for Adjuster handling.

Claims will be set up and entered into Juris within 24 hours of receipt of the notice of loss. PLAN and Members will have 24/7 accessibility to online claim info via xxx.

The following steps will occur upon submission of a claim:

1. TPA will acknowledge the assignment within 48 hours of the submission of the claim.
2. A preliminary report will be generated by the Adjuster to the Member Liaison, 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. 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 Within three days of receipt from PLAN JPA member.

Reporting will be directed to both xxx and the appointed PLAN Litigation Manager as follows:

Susan DeNardo
Litigation Manager
1750 Creekside Oaks Drive, Suite 200
Sacramento, California
Direct: (916) 244-1199
susan.denardo@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 (including multiple claims or suits arising out of one *Occurrence*), in which the exposure may exceed fifty (50%) percent of the PLAN Member's retained limit based on your or the defense counsel's judgment (adding indemnity and legal reserve together);
- b) A demand or demands totaling fifty (50%) percent of the PLAN Member's remaining retained limit or more;
- c) Title 42 USC 1983 matters alleging a violation of civil rights;
- d) Non-Employment Sexual Abuse conduct;
- e) Any claim or case in which a complaint has been filed and served on the PLAN Member;
- f) Death;
- g) Paralysis, paraplegia, quadriplegia;
- h) Loss of use of any sensory organ;
- i) Amputation;
- j) Spinal cord or brain injury;
- k) Third degree burns involving ten percent or more of the body;

- l) Nerve injury and/or neurological deficit;
- m) Loss of use of any body function,
- n) Substantial disability or disfigurement; or
- o) Loss of work time of six months or more.

The PLAN's General Liability Program limits are \$1 million. CARMA (first excess coverage) policy number CARMA 2023-GL provides \$9 Million in excess above \$1 Million PLAN JPA coverage.

The second coverage layer is Safety National (Reinsurance Excess Coverage) which provides \$5 Million in excess of \$1 Million PLAN JPA Coverage and \$9 Million CARMA Excess Policy.

The Third layer of Excess Coverage is Everest (Reinsurance Excess Coverage) which provides \$5 Million excess of \$1 Million PLAN JPA Coverage, \$9 Million CARMA Excess Policy, and \$5 Million Safety National.

The Fourth excess coverage is Starstone Specialty Insurance Company, which provides \$5 Million Excess \$1 Million PLAN JPA Coverage, \$9 Million CARMA Excess Policy, \$5 Million Safety National, and \$5 Million Everest Policy.

The Fifth excess coverage is Axis Insurance Policy which provides \$5 Million excess \$1 Million PLAN JPA Coverage, \$9 Million CARMA excess policy, \$5 Million Safety National policy, \$5 Million Everest policy, and \$5 Million Hallmark excess policy.

The Sixth excess coverage is Navigators Excess Insurance which provides \$5 Million Excess \$1 Million PLAN JPA Coverage, \$9 Million CARMA Excess Policy, \$5 Million Safety National Reinsurance Excess Policy, \$5 Million Everest Reinsurance Excess Policy, \$5 Million StarStone Excess Policy, and \$5 Million AXIS Excess Insurance 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

The servicing contacts at Alliant Insurance Service are as follows:

Seth Cole, ARM
Senior Vice President
Direct: 415.403.1419
scole@alliant.com

Stacey Weeks, CRIS
Vice President
Direct: 415.403.1448
sweeks@alliant.com

Thomas Joyce
Technical Assistant
Direct: 415.403.1417
TJoyce@alliant.com

B. FILE ADMINISTRATION

Claim files are maintained electronically and managed in Juris. 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:

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. 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

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.
5. Where there is a 25% to 50% chance for favorable outcome, reserve for favorable outcome plus 75% of probable adverse outcome.
6. 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 TPA Claim Manager and closely observed by the PLAN Litigation Manager. Member questions regarding reserving practices should be discussed with Liability Claims Team Lead Bryan Boyle.

F. GOVERNMENT TORT CLAIMS ASSESSMENT

Upon receipt of claim, 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.

TPA is positioned to assist with mailing notices of untimeliness and insufficiency, if requested by Member.

G. RECOVERY MANAGEMENT

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

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 averse 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 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

TPA 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 \$1 million) or that otherwise require approval by PLAN JPA according to PLAN's governing documents are to be directed to the PLAN Litigation Manager, with a copy to the Member for potential Executive Committee consideration.

Once authority has been extended, aggressive and prompt settlement negotiations will be conducted by the 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. Liability Claims Team Lead 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

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.

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 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.

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

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

TPA will recognize potential coverage issues and immediately coordinate with PLAN for review with PLAN coverage counsel. 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, Adjusters may be called upon to present claim findings and disposition during the appeal process starting with Executive Committee, to the full Board of Directors, and finally, if necessary, to arbitration.

**APPENDIX B - PLAN JPA Memoranda of Coverage for the Liability and Property
Programs**



MEMORANDUM OF COVERAGE – LIABILITY

Issue Date: July 1, 2023

**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: 07/01/2023 12:01 A.M., Pacific Time
TO: 07/01/2024 12:01 A.M., Pacific Time

LIMIT OF COVERAGE: \$1,000,000 per Occurrence less Covered Party's Retained Limit in Endorsement No. 2. With respect to Employee Benefit Plan Administration Liability, the Limit of Coverage is \$250,000 per Occurrence.
Coverage is provided on an excess basis up to a limit of coverage of \$30,000,000 per occurrence, less covered party's retained limit of \$20,000,000 per occurrence. Excess coverage does not apply to employee benefit plan administration liability.

These amended declarations are effective as of July 1, 2023, and supersede the declarations previously issued.

In consideration for the payment of the Member Contributions, PLAN JPA and the Entities COVERED which are designated in ENDORSEMENT No. 1 to the 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 a Covered Party under SECTION II – WHO IS A COVERED PARTY.
- E. Coverage Period means the COVERAGE PERIOD that is designated in the Declaration 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.
- G. 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; or
 - 2. It 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; or
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; or
3. Any obstruction in a canal used to raise or lower water therein or divert water therefrom; or
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; or
5. Any railroad fill or structure; or
6. Any tank constructed of steel or concrete or of a combination thereof; or
7. Any tank elevated above the ground; or
8. Any barrier which is not across a stream channel, watercourse of natural drainage area, and which has the principal purpose of impounding water for agricultural use; or
9. An 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.

H. Damages mean 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 the Memorandum.

Damages does not include:

1. Any monetary sum paid or awarded as or for restitution; or
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; or
3. Any monetary sum paid or awarded as or for double, triple, or any other mathematical multiplier of Damages; or
4. Any costs of complying with equitable or other injunctive relief; or

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; or
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; or
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.

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; or
2. Any salaries of employee of PLAN or a Covered Party; or
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; or
4. 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, errors, or omission in Employee Benefit Plan Administration. For purposes of this definition:

1. Employee Benefit Plan means only the following employee benefit plans:
 - a. Educational tuition reimbursement plans
 - b. Group plans for life, health, dental, disability, automobile, homeowners, or legal expense insurance
 - c. Pension plans
 - d. Salary Reduction plans under Internal Revenue Code Section 457, including any amendments

- e. Pre-tax medical and dependent care savings plans
- f. Social security system benefits
- g. Workers Compensation and unemployment insurance benefits
- h. California Public Employees Retirement System benefits

2. Administration means only the following administrative function, 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 or Employee Benefit Plan records

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 the 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); and
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. 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 the Pooled Liability Master Program Document.
- O. Memorandum means this MEMORANDUM OF COVERAGE – LIABILITY, including the DECLARATIONS and all endorsements hereto.
- P. 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.
- Q. 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.

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.

4. 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.
 5. 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.
- R. 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 Pooled Liability Program.
 - S. 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; or
 2. Malicious prosecution; or

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; or
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.

T. 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 NPEDES permit), and
10. Residual streams of wastewater treatment

U. 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.

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

W. Retained Limit shall mean the amount stated on the applicable Declarations or certificate of coverage, which will be paid by the Entity before PLAN is obligated to make any payment from the pooled funds.

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

- Y. 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.
- Z. 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 VI - 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; or
 - 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; or
 - 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; or
 - 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 eminent domain or inverse condemnation claims, except for inverse condemnation claims due to accidentally caused Property Damage resulting from any of the following: weather acting upon or with the Covered Party's property or equipment, accidental failure of the Covered Party's property or equipment, negligent design or maintenance of or inadequate design of a public work or public improvement. Notwithstanding the above,

this Memorandum shall not afford inverse condemnation coverage for any claim arising out of the design, construction, ownership, maintenance, operation, or use of any water treatment plant or wastewater treatment plant, no matter how or under what theory such claim is alleged, except a claim based upon the accidental failure of the equipment utilized or contained within the water treatment plant or wastewater treatment plant.

- 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 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,
 - 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 Retained Limit 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.
5. PLAN, at its option, shall not commit the member Entity to any settlement without the Entity's consent. Should the claimant or plaintiff, as the case may be, tender a *bona fide*, good faith settlement demand which when added to Defense Costs incurred to date is in excess of the Entity's Retained Limit, the payment of which would result in the full and final disposition of said claim or suit, if such settlement is not acceptable to the Entity and PLAN tenders to the member Entity an amount equal to the difference between the Retained Limit, less incurred Defense Costs, and said settlement demand, then PLAN's agreement to pay for Damages and Defense Costs hereunder shall be discharged and terminated as to all Covered Parties, and PLAN shall have no further obligations with respect thereto.

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.

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. 7/1/2023, forms part of a Memorandum No. PLAN 2023-GL.

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

Pooled Liability Assurance Network Joint Powers Authority
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. 7/1/2023, forms part of a Memorandum No. PLAN 2023-GL.

It is understood the Retained Limit 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**

**MEMORANDUM OF COVERAGE
FOR THE
POOLED PROPERTY PROGRAM**

In consideration of the premiums paid and the covenants in this Memorandum, the Pooled Liability Assurance Network Joint Powers Authority (PLAN JPA) agree as follows:

I. Excess Insurance

PLAN JPA shall purchase a policy or policies of property insurance including endorsements naming each Member Entity participating in the Property Program as a Named Insured (collectively, the "Excess Policy").

II. Pooled Coverage

PLAN JPA shall pay to the Member Entity and to any person insured under the Excess Policy for any loss arising out of any one occurrence (which, but for the amount of the loss, would be covered under the Excess Policy) the portion of such loss which exceeds the Retained Limit up to the point at which such loss is covered under the Excess Policy. The coverage period and property covered are the same as the Excess Policy.

III. Pooled Coverage Limits

PLAN JPA shall pay all losses and damages within the Pooled Coverage described in § II which exceeds the individual retained limits of the Member Entities set forth below:

Vehicle loss or damage	-	\$5,000 per occurrence
All other	-	\$5,000 per occurrence

PLAN JPA's liability under this Section and Section II shall not exceed the self-insured retention under the Excess Policy or the limit(s) under the aggregate stop loss or deductible endorsement portion of the Excess Policy.

IV. Procedures

For all losses within the Pooled Coverage, PLAN JPA shall have all the rights and obligations of the "insurer," the "company" and cognate terms as set forth in the Excess Policy. For all losses exceeding the Pooled Coverage, PLAN JPA shall be responsible for coordinating claims adjusting, loss payments, subrogation and other processes, procedures, and the rights and obligations of PLAN JPA and the issuer(s) of the Excess Policy with respect to PLAN JPA and the issuer(s) of the Excess Policy. Each Member Entity shall have the rights and obligations of the "insured" and cognate terms as set forth in the Excess Policy.

V. Definitions

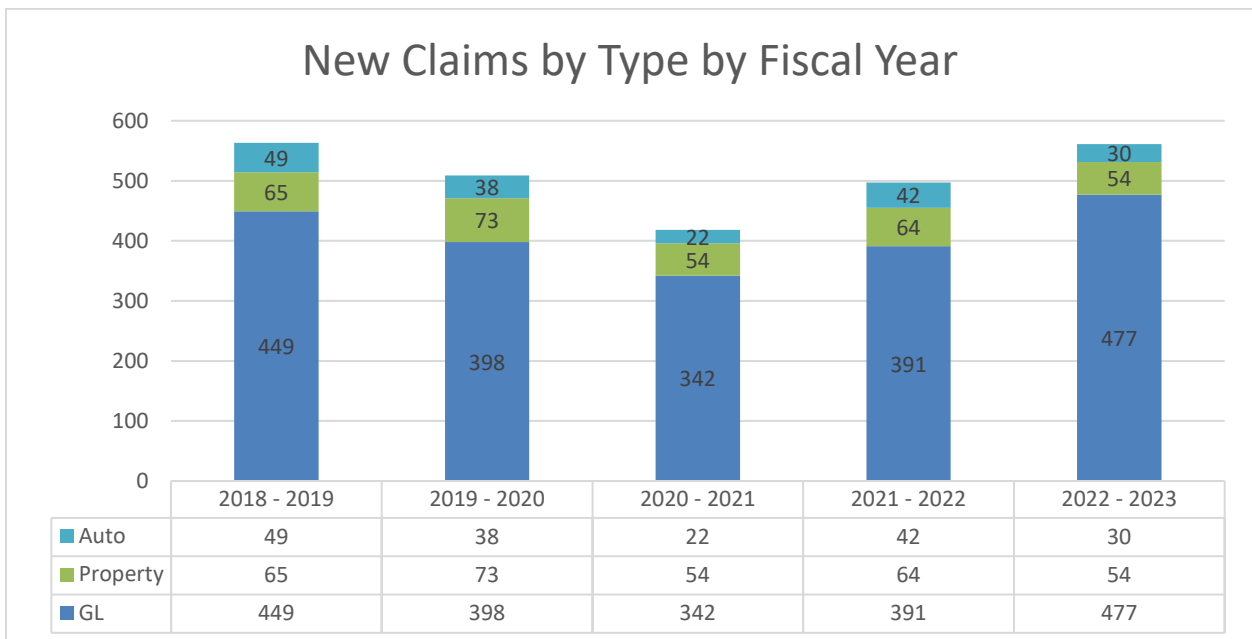
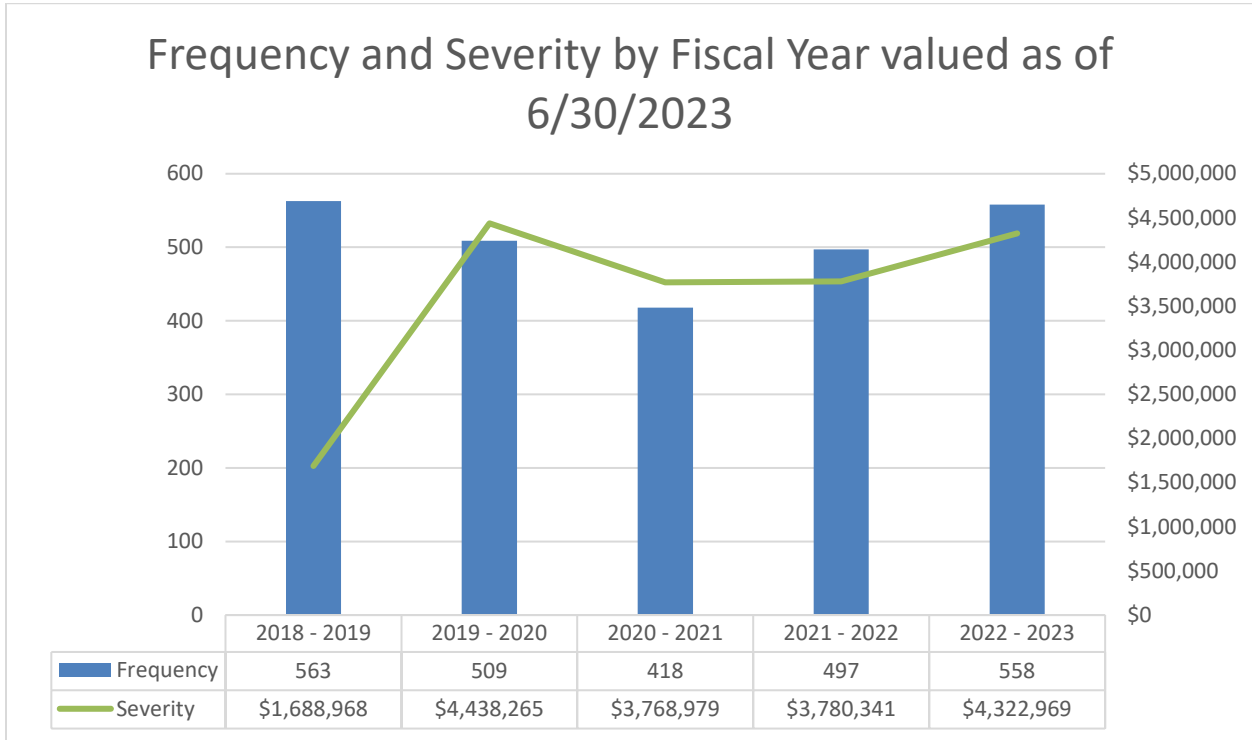
All capitalized terms shall have the meanings ascribed to them in the Excess Policy.

-End-

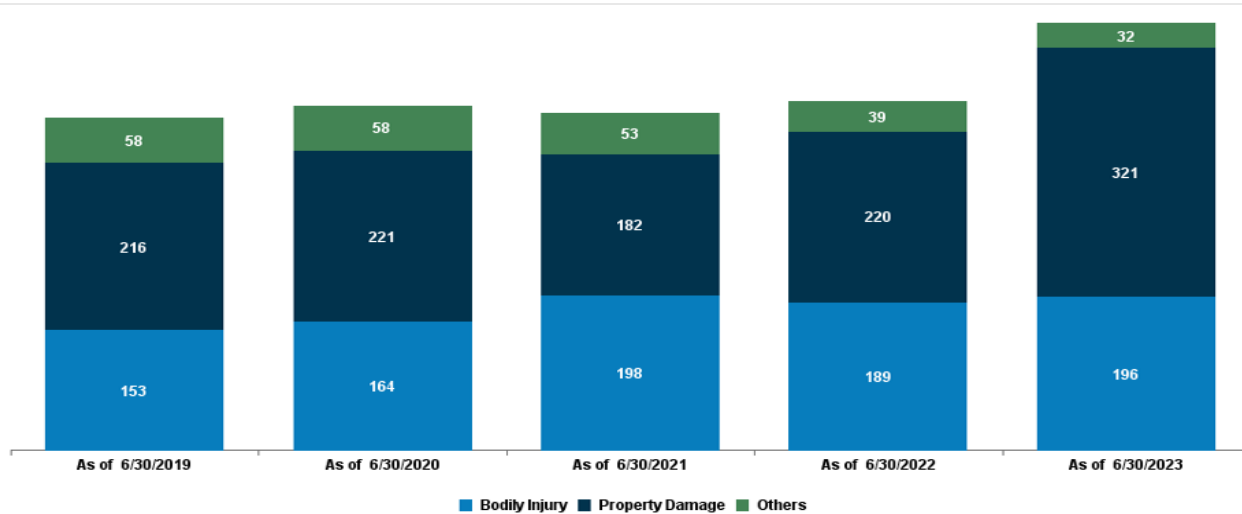
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APPENDIX C - PLAN JPA Claims Summary

During the last completed program year 2022-23, PLAN had 558 claims reported.



Open Inventory by Fiscal Year by Coverage Type (All Claims)



Coverage Code	As of 6/30/2019	% of Total	As of 6/30/2020	% of Total	As of 6/30/2021	% of Total	As of 6/30/2022	% of Total	As of 6/30/2023	% of Total
Bodily Injury	153	35.8%	164	37.0%	198	45.7%	189	42.2%	196	35.7%
Property Damage	216	50.6%	221	49.9%	182	42.0%	220	49.1%	321	58.5%
Others	58	13.6%	58	13.1%	53	12.2%	39	8.7%	32	5.8%
Total	427	100.0%	443	100.0%	433	100.0%	448	100.0%	549	100.0%

APPENDIX D – Sample Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT

By and Between

PLAN JPA

and

XXX

for

General Liability/Property Claims Administration Services

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PROFESSIONAL SERVICES AGREEMENT

By and Between POOLED LIABILITY ASSURANCE NETWORK

and XXX

For THIRD PARTY ADMINISTRATOR

THIS AGREEMENT (this “Agreement”) is made and entered into as of the 25th day of January 2024, by and between Pooled Liability Assurance Network (herein called “PLAN.”), a Joint Powers Authority, and XXX (herein called “CONSULTANT”).

RECITALS

WHEREAS, PLAN requires certain work services as described in Exhibit “A” of this Contract; and

WHEREAS, the services required for the Project cannot be performed satisfactorily by the officers of PLAN; and

WHEREAS, the parties hereto now wish to enter into this Agreement pursuant to which CONSULTANT will render professional services in connection with the Project as hereinafter provided.

NOW, THEREFORE, the parties hereto agree as follows:

1. SCOPE OF SERVICES

CONSULTANT’s services are generally described in Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. CONSULTANT agrees to provide legal services for the tasks identified as directed by the General Manager.

2. PERIOD OF PERFORMANCE

CONSULTANT's services hereunder shall commence upon issuance of a written Notice to Proceed (NTP) issued by PLAN's Assistant General Manager, but no member engagement shall occur prior to January 1, 2025 and shall continue until the project is completed but in no way past June 30, 2028 or until otherwise terminated or extended as hereinafter provided by written amendment, except that all indemnity and defense obligations hereunder shall survive termination of this Contract. CONSULTANT shall not be compensated for any Work performed or costs incurred prior to the approval of the Board of Directors or if authority has been granted to the Executive Committee.

PLAN, at its sole discretion, may extend the original term of the Contract through the issuance of a Board approved amendment.

3. COMPENSATION AND METHOD OF PAYMENT

A. Compensation. CONSULTANT shall be compensated for services and PLAN shall be obligated to pay only such fees, allowances, costs, reimbursements, or other compensation as are specified below based on the defined Administration Fee for each of the program years of service plus any period less than a full program year shall be prorated at the current established rate set forth in Attachment A, attached hereto and incorporated herein by this reference, which include all applicable surcharges such as taxes, insurance, and fringe benefits as well as indirect costs, overhead and profit allowance, materials, and supplies.

B. Expenses. PLAN will reimburse CONSULTANT for all expenses deemed reasonable and necessary that are defined in the proposal incurred by CONSULTANT in the performance of this Agreement.

A. Method of Payment. CONSULTANT shall submit invoices for services rendered on a monthly basis, identifying the work for which payment is requested; the hours worked or the deliverable completed; any authorized expenses, together with receipts for such expenses, if requested; the total amount requested; and the cumulative amount billed and paid under this Agreement. Payment shall be made by PLAN within thirty (30) days of receipt of an acceptable invoice, approved by a designated representative. All invoices shall be made in writing and delivered or mailed to PLAN as follows:

“Attention: PLAN”

4. AMENDMENTS

PLAN reserves the right to request changes in the services to be performed by CONSULTANT. All such changes shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the Executive Director or a designated representative and CONSULTANT and specifically identified as amendments to the Agreement. Any services added to the scope of the Agreement by an amendment shall be subject to all applicable conditions of the Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a duly executed amendment.

5. TERMINATION

PLAN may terminate this Agreement, in whole or in part, at any time by written notice to CONSULTANT. Upon receipt of notice of termination, CONSULTANT shall stop work under this Agreement immediately, to the extent provided in the notice of termination, and shall promptly submit its termination claim to PLAN. CONSULTANT shall be reimbursed for hours performed, plus expenses, up to the time of termination, not to exceed the maximum amount payable under the Agreement or, for deliverables-based payment, not to exceed the maximum payable for the deliverable.

CONSULTANT may withdraw from representation of PLAN, and terminate this Agreement, at any time, as required or permitted by Rule 3-700 of the California Rules of Professional Conduct, on “Termination of Employment,” operative May 27, 1989 (and as those Rules may be amended from time to time).

6. INSURANCE REQUIREMENTS

A. Minimum Coverages. CONSULTANT shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement, placed with insurers with a Best’s rating of A-VIII or better.

- i. Workers’ Compensation Insurance in the amount required by the applicable laws, and Employer’s Liability insurance with a limit of not less than \$1,000,000 per accident for bodily injury or disease, and any and all other coverage of CONSULTANT’s employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation endorsement in favor of PLAN.
- ii. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of CONSULTANT and CONSULTANT’s officers, agents, and employees and with limits of liability which shall not be less than \$2,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$4,000,000, and Personal & Advertising Injury liability with a limit of not less than \$2,000,000. Expense for Indemnitee’s defense costs shall be outside of policy limits and such policy shall be issued on a Duty to Defend Primary Occurrence Form.

PLAN and its board members, officers, representatives, agents, and employees are to be named as additional insureds. Such insurance as

afforded by this endorsement shall be primary as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.

- iii. Automobile Insurance for all automobiles owned, used, or maintained by CONSULTANT and CONSULTANT's officers, agents, and employees, including but not limited to owned, leased, non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence.
- iv. Professional Liability Insurance (if applicable) in an amount no less than \$5,000,000 per occurrence/\$5,000,000 aggregate. If such policy is written on a "Claims-Made" (rather than an "occurrence") basis, CONSULTANT agrees to maintain continuous coverage in effect from the date of the commencement of services to at least three (3) years beyond the termination or completion of services or until expiration of any applicable statute of limitations, whichever is longer. The policy shall provide coverage for all work performed by the CONSULTANT.
- v. Property Insurance. Property Insurance covering CONSULTANT'S own business personal property and equipment to be used in performance of this Agreement. Coverage shall be written on a "Special Form" ("All Risk") that includes theft, but may exclude earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of PLAN. If such insurance coverage has a deductible, CONSULTANT shall also be liable for the deductible.
- vi. Non-Limitation of Insurance Requirements. The insurance coverage provided, and limits required under this Contract are minimum requirements and are not intended to limit the CONSULTANT's indemnification obligations under the Contract, nor do the indemnity obligations limit the rights of the Indemnified Parties to the coverage afforded by their insured status. To the extent required by Law in

connection with Work to be performed, the CONSULTANT shall obtain and maintain, or cause to be obtained and maintained, in addition to the insurance coverage expressly required under this Contract, such other insurance policies for such amounts, for such periods of time and subject to such terms as required by Law and any other agreements with which the CONSULTANT is required to comply, including any Third-Party Agreements. Liability insurance coverage will not be limited to the specific location designated as the Site, except that if the CONSULTANT arranges project-specific general liability, excess liability, or workers' compensation coverage, limitations of coverage to the Site will be permitted subject to PLAN approval and use of the broadest available site-specific endorsements. No liability policy will contain any provision or definition that would serve to eliminate so-called "third-party-over action" claims, including any exclusion for bodily injury to an employee of the insured or of any Subcontractor. The CONSULTANT acknowledges and will at all times comply with the provisions of Labor Code Section 3700 which require every employer in the State to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code.

- b. Deductibles and Retentions. CONSULTANT shall be responsible for payment of any deductible or retention on CONSULTANT's policies without right of contribution from PLAN. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that PLAN seeks coverage as an additional insured under any CONSULTANT insurance policy that contains a deductible or self-insured retention, CONSULTANT shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected

with any alleged act of CONSULTANT, subconsultant, subcontractor, or any of their employees, officers or directors, even if CONSULTANT or subconsultant is not a named defendant in the lawsuit.

- c. Notice of Termination. All CONSULTANT policies shall provide that the insurance carrier shall give written notice to PLAN at least 30 days prior to cancellation of the policy or policies (unless canceled for non-payment, then 10 days prior written notice will be given) and shall provide notice of such cancellation to PLAN and any other additional insured.
- d. Additional Provisions. Each policy or policies of insurance described in Commercial General Liability Insurance, above, shall contain the following provisions:
 - Inclusion of PLAN, its successor entity, and their respective commissioners, officers, representatives, agents and employees, as additional insureds with respect to work or operations in connection with this Agreement.
 - Endorsement providing that such insurance is primary insurance, and no insurance of PLAN will be called on to contribute to a loss.
- e. Certificates of Insurance. Prior to commencement of any work hereunder, CONSULTANT shall deliver to PLAN Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof. CONSULTANT agrees, upon written request by PLAN, to furnish copies of such policies or endorsements, certified by an authorized representative of the insurer.
- f. Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONSULTANT are not intended to and shall not in

any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant hereto.

7. STATUS OF CONSULTANT

CONSULTANT is an independent contractor retained through this Agreement to provide legal services in specific areas of law and not to participate in or advise PLAN on general ongoing decisions. CONSULTANT is not an employee of PLAN and has no authority to contract or enter into any other agreement in the name of PLAN. CONSULTANT has, and hereby retains, full control over the employment, direction, compensation, and discharge of all persons employed by CONSULTANT who are assisting in the performance of services under this Agreement. CONSULTANT shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. CONSULTANT shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

CONSULTANT shall conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendations, or counsel independent of the control and direction of PLAN or any PLAN official, other than normal contract monitoring, and shall possess no authority with respect to any PLAN decision beyond rendition of information, advice, recommendations, or counsel. The authority of CONSULTANT to make representations or statements on behalf of PLAN shall be limited to representations or statements that reflect or convey agency decisions of PLAN and which are of a type that outside counsel normally make in the context of representation of a client.

8. WORK PRODUCTS CONFIDENTIAL

Work products prepared or assembled by CONSULTANT, obtained from others by CONSULTANT or made available to CONSULTANT by PLAN in connection with the services under this Agreement shall be treated as confidential by CONSULTANT and subject to the Attorney Work Product Doctrine and the attorney-client privilege, and

CONSULTANT agrees that they shall not be made available to any individual or organization without prior approval of PLAN.

9. SUBCONTRACTS

CONSULTANT shall not subcontract all or any portion of its services under this Agreement without the prior written approval of the Project Manager or a designated representative, and any attempt to do so shall be void and unenforceable. In the event that CONSULTANT enters into one or more subcontracts pursuant to this Article, it is understood and agreed that the participating subcontractors shall be solely and directly responsible to CONSULTANT, and PLAN shall have no obligation to them.

10. ASSIGNMENT OF AGREEMENT

CONSULTANT shall not assign this Agreement, or any part hereof without prior express written consent of PLAN or a designated representative, and any attempt thereat shall be void and unenforceable.

11. RECORDS

CONSULTANT shall maintain full and adequate books, records, and accounts in accordance with generally accepted accounting practices. All such books, records, accounts, and any and all work products, materials, and other data relevant to its performance under this Agreement shall be retained by CONSULTANT for a minimum of four (4) years following the fiscal year of the last expenditure under this Agreement.

12. AUDITS

CONSULTANT shall permit PLAN and its authorized representatives to have access to CONSULTANT's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement, for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement, and for the period specified

in Article 12. CONSULTANT shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials, and data for that period of time.

13. NOTICES

Except for invoices submitted by CONSULTANT pursuant to Article 3, all notices, or other communications to either party by the other shall be deemed given when made in writing and delivered, mailed, emailed, or faxed to such party at their respective addresses as follows:

To PLAN:

Attention:

Eric Dahlen, General Manager

PLAN

1750 Creekside Oaks, Suite 200

Sacramento, CA 95833-3648

To CONSULTANT:

Attention:

Email:

Tel:

Fax:

14. PROHIBITED INTEREST

15. No member, officer, employee, or agent of PLAN, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, *et seq.* and 87100 *et seq.*, direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. CONSULTANT further covenants that it has made

a complete disclosure to PLAN of all facts of which it is aware upon due inquiry bearing upon any possible interest, direct or indirect, which it believes any member, officer, agent or employee of PLAN (or an immediate family member, domestic partner or employer or prospective employer of such member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by PLAN.

SOLICITATION OF CONTRACT

CONSULTANT warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person other than bona fide employees working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of the Agreement. For breach or violation of this warranty, PLAN shall have the right to terminate the Agreement without liability or, at its discretion, the right to deduct from CONSULTANT's maximum payment the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent consideration.

16. INTEREST OF THE CONSULTANT

CONSULTANT covenants that it has a duty to disclose any potential conflicts of interest and has disclosed any potential conflicts of interest existing at the time of execution of the Agreement. CONSULTANT will otherwise act in accordance with its ethical obligations in performing its work for PLAN. PLAN acknowledges that CONSULTANT may represent individual members of PLAN, and hereby acknowledges and waives any potential conflict of interest. In the event of an actual conflict, CONSULTANT will be required to recuse itself from matters giving rise to the conflict.

To the extent that an actual or potential conflict of interest is identified in the course of this engagement, CONSULTANT will seek the informed written consent of both PLAN and the other client where appropriate, in accordance with the State Bar of California Rules of Professional Conduct.

17. LAWS AND REGULATIONS

CONSULTANT shall comply with any and all laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of such government, including but not limited to PLAN, that relate to or in any manner affect the performance of the Agreement. Those laws, statutes, ordinances, rules, regulations, and procedural requirements which are imposed on PLAN as a recipient of federal or state funds are hereby in turn imposed on CONSULTANT.

18. REMEDIES FOR BREACH

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by PLAN or CONSULTANT shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

19. CHOICE OF LAW

All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of California applicable to agreements made and to be performed within the State.

20. MEDIATION

Prior to the initiation of any legal proceedings, the parties of this Agreement agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation, application, or enforcement of this Agreement to non-binding mediation. Such mediation shall be conducted under the auspices of the American Arbitration Association or such other mediation service or mediator upon which the parties agree. The Party seeking to initiate mediation shall do so by submitting a formal, written request

to the other party to this Agreement. This section shall survive completion or termination of this Agreement, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceeding to litigate such claim or dispute under the laws of the State of California.

21. ENTIRE AGREEMENT

The Agreement is the entire agreement of the parties. CONSULTANT represents that in entering into the Agreement it has not relied on any previous representations, inducements, or understandings of any kind or nature.

22. PARTIAL INVALIDITY

If any term or condition of the Agreement is found to be illegal or unenforceable, such term or condition shall be deemed stricken and the remaining terms and conditions shall remain valid and in full force and effect.

23. BENEFIT OF AGREEMENT

The Agreement shall bind and benefit the parties hereto and their heirs, successors, and permitted assigns.

IN WITNESS WHEREOF, the Agreement has been executed by the parties hereto as of the day and year first written above.

PLAN

CONSULTANT

Rebecca Mendenhall,
President of the Board of Directors

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