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EXECUTIVE COMMITTEE MEETING AGENDA

Thursday, August 6, 2026
10:00 a.m.

Zoom
Meeting ID: 834 5123 2844
Passcode: 592201

All or portions of this meeting will be conducted by teleconferencing in accordance with Government Code Section 54953(b). Teleconference locations are as follows: Sedgwick, 1750 Creekside Oak Drive, Suite 200, Sacramento, CA 95833; Town of Atherton, 91 Ashfield Road, Atherton, CA 94027; City of Burlingame, 501 Primrose Rd, Burlingame, CA 94010; Town of Colma, 1198 El Camino Real, Colma, CA 94014; City of Half Moon Bay, 501 Main Street, Half Moon Bay, CA 94022; Town of Los Gatos, 110 East Main St., Los Gatos, CA 95030; City of Morgan Hill, 17575 Peak Ave, Morgan Hill, CA 95037; City of Pacifica, 170 Santa Maria Avenue, Pacifica, CA 94044; City of San Carlos, 600 Elm St, San Carlos, CA 94070; and Town of Woodside, 2955 Woodside Road, Woodside, CA 94062.

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

In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation to participate in this meeting, please contact Kassandra Batista at kassandra.batista@sedgwick.com (916) 244-1103 or (916) 244-1199 (fax). Requests must be made as early as possible, and at least one full business day before the start of the meeting.

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

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1. CALL TO ORDER

2. INTRODUCTIONS

3. APPROVAL OF AGENDA AS POSTED (OR AMENDED)

* Reference materials enclosed with staff report.

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4. PUBLIC COMMENTS - The Public may submit any questions in advance of the meeting by contacting Kassandra Batista at: kassandra.batista@sedgwick.com. This time is reserved for members of the public to address the Committee relative to matters of the Executive Committee not on the agenda. No action may be taken on non-agenda items unless authorized by law. Comments will be limited to three minutes per person and twenty minutes in total.

5. GENERAL MANAGER'S REPORT

4 A. General Manager's Report

Recommendation: None.

6. LITIGATION MATTERS

7 *A. Consideration and Recommendation of Approval of Proposed Authority and Appeals Changes to the Liability Master Program Document

Recommendation: Staff recommends the Executive Committee recommend the Board of Directors approve the edits to the Liability Master Program Document.

36 *B. Consideration and Recommend Approval of Liability Memorandum of Coverage Updates Clarifying SAM Coverage for the 2027/28 Program Year

Recommendation: Staff recommends the Executive Committee recommend the Board of Directors approve the proposed edits to the 2027/28 Liability Memorandum of Coverage.

7. CLOSED SESSION

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

- Aguilar and Frias v. South San Francisco
- Blanco v. Los Gatos
- Bouri v. Burlingame
- Fair (Kona Trust) v. Portola Valley
- Mitchell v. Burlingame
- Wan v. Tiburon

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

8. CLOSING COMMENTS

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

A. Executive Committee
B. Staff

9. ADJOURNMENT

* Reference materials enclosed with staff report.

GENERAL MANAGER'S REPORT

SUBJECT: Report from PLAN JPA's General Manager

BACKGROUND AND HISTORY:

Eric Dahlen, General Manager, will be in attendance to provide updates to the Executive Committee on the following topics:

Executive Summary

During the first half of 2026, PLAN JPA continued to advance several major strategic initiatives focused on organizational growth, financial stability, risk management excellence, and enhanced member services. The Board's efforts centered on implementation of the PLAN-WORKS Workers' Compensation Program, development of the Captive Insurance Program, long-term financial planning, renewal of key operational contracts, and strengthening risk management and actuarial oversight. These initiatives position PLAN JPA for growth opportunities while maintaining its commitment to providing high-quality, cost-effective risk financing solutions.

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1. PLANWORKS Workers' Compensation Program Implementation

Overview

The Board's most significant accomplishment during the reporting period was the successful launch and ongoing development of PLANWORKS, the Authority's pooled workers' compensation program. Following approval of the program in 2025, substantial effort was directed toward establishing governance structures, operational protocols, funding mechanisms, and member support services.

Strategic Impact

The implementation of PLANWORKS represents a significant expansion of PLAN JPA's service offerings and establishes a foundation for future growth in the workers' compensation arena. Staff continues to evaluate opportunities for program expansion while ensuring long-term sustainability and competitive pricing.

2. Captive Insurance Program Development

Overview

The Board continued advancing the development of a captive insurance vehicle designed to enhance PLAN JPA's long-term risk financing capabilities and investment flexibility. Throughout the reporting period, staff, legal counsel, and consultants worked to resolve regulatory, governance, and operational considerations associated with captive formation

Strategic Impact

The captive initiative is expected to provide PLAN JPA with greater flexibility in managing retained risk, enhancing investment opportunities, and creating additional financial tools to support member agencies over the long term.

3. Financial Strength and Long-Term Funding Strategy

Overview

PLAN JPA maintained a strong financial position throughout the reporting period while evaluating strategies to balance prudent reserve funding with member affordability.

Financial Highlights

According to the June 2026 actuarial report:

- Estimated Liability Program assets totaled approximately **$53.99 million**.
- Estimated outstanding liabilities totaled approximately **$32.94 million**.
- The program remains funded above the 90% confidence level, reflecting a strong balance sheet and adequate reserve position.

Strategic Impact

Strong financial performance has allowed the Board to explore dividend opportunities, increased reserve confidence levels, and captive capitalization strategies while maintaining actuarially sound funding practices.

4. Professional Services and Contract Renewals

Overview

A significant governance effort during the reporting period involved evaluating critical service-provider relationships scheduled for renewal effective July 1, 2026.

Major Accomplishments

The Board reviewed contracts and service arrangements involving:

- Administrative Services
- Actuarial Services
- Brokerage Services
- Board Counsel
- Risk Control Services

Discussions focused on:

- Service quality and performance.
- Growing operational demands.
- Future staffing needs.
- Procurement and RFP considerations.
- Long-term contract structures and pricing models.

Strategic Impact

These efforts help ensure that PLAN JPA continues to receive high-quality professional support while maintaining fiscal responsibility and transparency.

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5. Risk Management, Claims Oversight, and Actuarial Performance

Overview

PLAN JPA continued its focus on proactive risk management and claims oversight through expanded training opportunities, actuarial reviews, and targeted member services.

Major Accomplishments

Risk Control Program

Risk Control staff:

- Performed targeted loss-run analyses.
- Conducted field inspections and safety assessments.
- Developed new self-assessment tools.
- Delivered webinars and regional training programs.
- Administered the Risk Management Grant Program.

Insurance Market Monitoring

The Board received updates regarding:

- Improved property insurance market conditions.
- Continued pressure within the liability market.
- Stable cyber insurance conditions.
- Increased workers' compensation claim severity and medical inflation concerns.

Actuarial Analysis

The actuarial review highlighted:

- Estimated 2026/27 liability program losses and expenses of approximately $7.4 million.
- Continued financial stability within the Property Program.
- Increasing liability claim activity requiring ongoing monitoring and risk management intervention.

Strategic Impact

The Authority's continued investment in risk control services, actuarial analysis, and member education supports safer operations, lower claim frequency, and long-term financial stability.

Looking Forward

As PLAN JPA enters Fiscal Year 2026/27, the Authority is well positioned to build upon the significant progress already achieved. Priority initiatives include:

- Continued growth and refinement of PLANWORKS.

- Operational launch and governance of the Captive Insurance Company.
- Implementation of updated funding and dividend strategies.

Conclusion

The last half of the 2025/26 program year marked one of the most productive and transformative periods in PLAN JPA's recent history. Through strategic planning, prudent financial stewardship, and a continued focus on member service, the Board of Directors advanced several initiatives that will strengthen the Authority for years to come. From the launch of PLANWORKS to the development of the captive insurance structure and continued financial growth, PLAN JPA remains committed to delivering innovative, sustainable, and member-focused risk management solutions.

STAFF RECOMMENDATION:

None.

REFERENCE MATERIALS ATTACHED:

- None.

LITIGATION MATTERS

SUBJECT: Consideration and Recommendation of Approval of Proposed Authority and Appeals Changes to the Liability Master Program Document

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BACKGROUND AND HISTORY:

Annual Review of the Liability Master Program Document

Each year, PLAN JPA staff conducts a comprehensive review of the Master Program Documents to ensure they remain relevant, consistent with industry best practices, and aligned with current operational needs and real-world applications. During the annual review of the Liability Master Program Document, the Litigation Management Department identified two substantive deficiencies, as well as several instances in which specially defined terms were not formatted in accordance with document standards (i.e., bolded and capitalized).

Settlement Authority Provisions

The first issue was identified in Article V: Claims Administration, Section C. A review of Paragraph 4 revealed a redundancy when considered in conjunction with the preceding paragraphs, which clearly establish settlement authority as follows:

- The Participant has settlement authority within its Retained Limit.
- The Litigation Manager has settlement authority up to $200,000 above the Participant's Retained Limit.
- The Executive Committee has settlement authority for all remaining claims up to the Limit of Coverage ($1,000,000).

Paragraph 4 currently states:

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

This provision is no longer applicable because there are no remaining liability claims that would require approval by the Board. The Executive Committee's settlement authority extends to the full Limit of Coverage available through PLAN JPA under the Liability Program.

Furthermore, since PLAN JPA joined CARMA, any settlement exceeding $1,000,000 is subject to review and approval through CARMA's claims governance process, including recommendations from CARMA's Litigation Manager to the CARMA Board of Directors. As a result, Paragraph 4 no longer serves an operational purpose and creates ambiguity regarding settlement authority.

Coverage Determination Appeals Process

The second issue was identified in Article V: Claims Administration, Section D, Disputes Regarding Management of Claims. The current language does not establish a formal procedure through which a Participant may appeal a coverage determination made by PLAN JPA staff or outside counsel.

This omission is inconsistent with current practice, as coverage determination letters routinely advise the Participant of the right to appeal the decision. However, the governing document does not currently describe how such an appeal is to be initiated, reviewed, or resolved.

The recommended addition of a new Paragraph 4 establishes a formal appeal process for coverage determinations. Adoption of this provision will provide Participants with a clear, consistent, and transparent mechanism for seeking review of coverage decisions, while ensuring uniform administration of the claims process throughout PLAN JPA.

STAFF RECOMMENDATION:

Staff recommends the Executive Committee recommend the Board of Directors approve the edits to the Liability Master Program Document.

REFERENCE MATERIALS ATTACHED:

- Red-line version of the proposed Liability Master Program Document

MASTER PROGRAM DOCUMENT – LIABILITY

Revised Date: July 1, 2026

CONTENTS

POOLED LIABILITY ASSURANCE NETWORK JOINT POWERS AUTHORITY (PLAN)

MASTER PROGRAM DOCUMENT(MPD)

FOR THE POOLED LIABILITY PROGRAM (PLP)

ARTICLE I: DEFINITIONS

The following definitions apply to this MPD:

1. **Administrator** shall mean the person responsible for the daily administration, management, and operation of the **Authority's** programs as defined in the Bylaws.
2. **Authority** shall mean the Pooled Liability Assurance Network Joint Powers Authority (PLAN).
3. **Board** shall mean the Board of Directors of the PLAN.
4. **Member Contributions** shall mean that amount to be paid by each **Participant** for each **program year** as determined by the **Board** in accordance with Article III, Section C of this MPD.
5. **Joint Powers Agreement** shall mean the agreement made by and among the public entities listed in Appendix A (**Member Entities**) of the **Joint Powers Agreement,** hereafter referred to as **Agreement.**
6. **Loss Experience** shall mean such amounts as are paid by the **Participant** or the **Authority** in settlement of claims, or in satisfaction of awards or judgments for liabilities imposed by law for **bodily injury**, **property damage**, **personal injury**, **public officials errors and omissions**, **sudden and accidental pollution**, as those terms are defined in the PLP Memorandum of Coverage (MOC) and to which that MOC applies.
7. **Limit of Coverage** shall mean the amount of coverage stated in the Declarations or certificate of coverage, or sublimits as stated therein or in the MOC for each **Participant** or **covered party** per **occurrence**, subject to any lower sublimit stated in the MOC.

8. **Participant** shall mean a **Member Entity**, which shall mean a signatory to the **Agreement** establishing the Pooled Liability Assurance Network Joint Powers Authority, who has elected to participate in the PLP.
9. **Program Year** shall mean that period of time commencing at 12:01 a.m. on July 1 and ending at 12:00 a.m. on the following July 1.
10. **Self-Insured Retention (SIR)** shall mean the amount that the **Member Entity** must pay (or cause to be paid) before **PLAN** is obligated to pay any amount under the terms of the PLP Memorandum of Coverage.
11. **Third Party Administrator (TPA)** shall mean the claims administrator for the **Authority** for the PLP.

ARTICLE II: GENERAL

A. AUTHORITY

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

B. PURPOSE

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

C. PARTICIPATION

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

D. GOVERNANCE

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

E. GOALS AND OBJECTIVES

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

ARTICLE III: PROGRAM ELEMENTS

A. PROGRAM YEARS

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

B. RETAINED LIMITS

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

C. MEMBER CONTRIBUTIONS

1. The **Administrator**, in conjunction with an actuary, shall establish rates and **Member Contributions**, subject to **Board** approval, adequate to fund the actuarially determined losses in the pooled layer of the PLP at the appropriate **Board**-determined confidence level, including estimated attorney fees and other claims related costs, the cost of excess coverage, and the projected administrative costs, including retirement of debt, if any, of the PLP.
2. The annual **Member Contributions** for each **Participant** shall be calculated by applying the **Participant's** estimated annual payroll to 1) the funding level as determined by the actuary and recommended by the **Administrator**, adjusted for individual **Participant's loss experience**, relative risk and **Participant retained limit** and/or the cost of any purchased primary insurance or reinsurance, and 2) a charge for the administrative and claims servicing expenses of the PLP as determined by the **Administrator** and approved by the **Board**. The cost of purchased excess coverage shall be passed through to each **Participant** based upon population, without consideration of payroll or experience modification, and included in the Member Contributions**.** After the end of the **program year**, adjustments from estimated to actual payroll may be made. Debit adjustments shall be billed to the **Participant**, and credit adjustments will apply to the next year's billings. An annual audit of a **Participant's** payroll may be conducted by the Authority.
3. The administrative expenses charged to each **Participant** shall be calculated as follows: Thirty three percent of the amount calculated is allocated equally to each **Participant**. Of the remaining sixty-seven percent, one-third is calculated based upon outstanding reported claims greater than $1 (i.e. excluding claims closed without payment) and two-thirds is calculated based upon paid losses from the prior five completed years;

D. EXPERIENCE MODIFICATION

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

Contributions. The calculation of the adjustment shall include the actual **loss experience** of the individual **Participant** as it relates to the average **loss experience** of the group as a whole. Such **loss experience** shall not consider loss years that are more than five years old. The losses shall be valued as of December 31. For example, when calculating ex-mod for2022/23, loss data from July 1, 2016, through June 30, 2021, valued at December 31, 2021 would be considered. The criterion that shall be used is the relationship of actual average **loss experience** over the period being rated as it relates to the average payroll for the same period. Losses considered for loss experience calculation shall be capped at $250,000 per Occurrence. A credibility factor will be applied, such that the Experience Modification will be balanced against annual payroll, with 90% loss weighting applied to the highest payroll **Participant** and 20% applied to the smallest payroll **Participant** and all other **Participants** subject to a sliding scale weighting based upon the **Participant**'s payroll in relation to the high and low payroll figures. The change in experience modification from year to year shall be capped at plus or minus thirty (30) percent.

E. DIVIDEND AND ASSESSMENTS

1. DIVIDENDS

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

b) Calculation

i. Dividends may not be declared from a **program year** until five years after the end of that **program year.**

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

iii. The dividend shall be reduced if any of the five succeeding program years (after the five years eligible for dividend calculation) have negative equity, in which case the **Board** will transfer equity between **program years** as it deems necessary pursuant to Section 2. (b) below, to re-establish an appropriate level of funding for the program year(s) with negative equity.

iv. Dividends may only be declared if the equity at the expected confidence level is five times the **Limit of Coverage**.

2. ASSESSMENTS

a) Assessments may be levied on the **Participants** for the risk sharing layer of any **program year(s)**, as approved by the **Board**, at such time as an actuary finds that the assets of the PLP, held for those program year(s), do not meet the expected discounted losses of the PLP. Each **Participant's** share of the assessment shall be allocated based upon the **Member Contributions** collected for the self- insured layer of each respective **program year** being assessed. If such assessment is not sufficient to relieve the pool of its actuarially determined deficit in the year of the assessment, such assessment shall be levied each subsequent year until the actuarially determined deficit is relieved. The timing of payment shall be determined by the **Board** at the time of assessment.

b) Equity from the risk sharing layer may be exchanged between eligible **program years** if sufficient funds are available. The transfer of equity will be performed so that the individual **Participant's** share of equity is separately applied so as to maintain the integrity of each **Participant's** balance.

F. EXCESS COVERAGE

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

2. Premiums for such coverage shall be paid by the PLP from the proceeds received as **Member Contributions** from the **Participants**

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

ARTICLE IV: ADMINISTRATION

A. BOARD

1. Discussion of developments and performance of the PLP may occur as part of any scheduled **Board** meeting.

2. The **Board** shall have the responsibility and authority to carry out and perform all functions and make all decisions affecting the PLP, consistent with the powers of the **Authority** and not in conflict with the **Agreement**, the Bylaws, or the MOC.

B. EXECUTIVE COMMITTEE

1. The Executive Committee shall have the responsibility and authority to carry out and perform all other functions and make all other decisions affecting the PLP, provided that such functions and decision are consistent with the powers of the **Authority** and are not in conflict with the **Agreement**, the Bylaws, or the MOC.

2. The Executive Committee shall meet at least twice a year to review the developments and performance of this PLP. The Executive Committee shall review, study, advise, make recommendations to the **Board**, or take any action which the Committee believes to be in the best interests of the PLP and its **Participants**, provided that such action is not prohibited by law or is not an action reserved unto the **Board.**

C. ADMINISTRATOR

The Administrator shall be responsible for:

1. The overall operation of the PLP;

2. Monitoring the status of the PLP and its operations, the development of losses, the program's administrative and operational costs, service companies' performance, and brokers' performance;

3. Assisting the **Board** in selecting brokers, actuaries, auditors, and other service companies;

4. Promoting the programs to prospective new participants;

5. Preparing, distributing, and maintaining all records of the PLP, including its MPD and MOC as these may be amended from time to time; and

6. Preparing Certificates of Coverage and Waivers of Subrogation as may be required by the **Participants** in the PLP.

D. DUTIES OF THE LITIGATION MANAGER

The Litigation Manager shall:

1. Control and oversee the administration and management of all general liability claims including those in litigation and shall have the authority to settle any claim as set forth herein, subject to the provisions of Article V or to reserve rights or deny coverage for a claim, subject to the **Participant**'s right to appeal such coverage determinations.

2. Perform a monthly review of claims files including the new claims that are likely to exceed fifty percent (50%) of the **retained limit** of the involved **Participant** as well as those claims for which a **Participant** or the **Board** has requested a specific review;

3. Review, at least quarterly, all open claims in excess of the involved **Participant's retained limit** and, if necessary, recommend action to be taken on such claims;

4. Report to the **Board** or Executive Committee at each meeting summarizing the active claims that are of general interest to **Participants**, claims for which a **Participant** or the **Board** or Executive Committee has specifically requested a review, and also review monthly claims reports and report to the **Board** or Executive Committee any significant trends that may be developing;

5. Monitor the reporting of formal tort claims and any action to be taken as recommended by the Liability Claims Procedures Manual;

6. Assist the **Participants** in training their personnel on the statutory government tort claims filing process, including the legal effect of taking (or not taking) certain actions on the formal claim;

7. Advise, where needed, on the setting and changing of reserves for all liability claims;

8. Report to any excess insurance, reinsurance company, or excess pool, all claims that meet the reporting requirements of such excess insurance, reinsurance company, or excess pool, or that will likely exceed the Authority's **retained limit;**

9. Provide guidance to the **Third-Party Administrator** on the management of complex or "problem" claims;

10. Review the performance of the **Third-Party Administrator;**

11. Advise and assist the **Administrator** in the selection of a **Third-Party Administrator;**

12. Recommend the amount of money to be paid on particular claims for settlement;

13. Answer inquiries from **Participants** regarding liability claims or procedures;

14. Establish, monitor and continually update a panel of outside defense attorneys and law firms who have demonstrated proficiency in defending liability actions against public agencies, including a list of attorneys who have demonstrated special expertise in certain areas of litigation;

15. Assist the **Participant** and the **Third-Party Administrator** in the selection of the appropriate defense attorney and/or law firm, for claims within the **Participant's retained limit;**

16. Assist in the selection of defense counsel for each claim where the ultimate net loss, as defined in the MOC, is at least fifty percent (50%) of the involved **Participant's retained limit;**

17. Advise, where needed, on the selection of defense counsel in claims where litigation is anticipated but not yet filed;

18. Have the authority to approve or deny the assignment of any claim, whether or not in litigation, to any law firm where the **Participant's** in-house or contract city or town attorney has been or is presently employed, or any law firm which has any form of contractual relationship with the **Participant;**

19. Continually monitor and evaluate the effectiveness of the panel defense firms and the overall management of the litigated claims, including, but not limited to, requiring the subject defense firm and/or individual defense attorney to submit their total legal billings on any one file for an independent legal bill audit as more fully outlined in the current Litigation Management Program Resolution; and

20. Provide other services as may reasonably be requested by the **Board**, Executive Committee, or a **Participant.**

ARTICLE V: CLAIMS ADMINISTRATION

A. CLAIMS PROCEDURES MANUAL

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

B. CLAIMS AUDIT

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

C. CLAIM SETTLEMENT AUTHORITY

1. Each **Participant** shall have settlement authority for all claims, including attorney fees and other costs, which do not exceed 100% of the **Participant's retained limit**. The Litigation Manager will review these claims from time to time and may offer a recommendation to the **Participant's Third-Party Administrator** and the **Participant** regarding settlement. This provision does not apply to claims for bodily injury or personal injury with bodily injury component for Medicare eligible or beneficiary claimants; **Participants** shall immediately notify the Litigation Manager once a claimant has been identified as Medicare eligible or a Medicare beneficiary.

2. The Litigation Manager shall have the authority to settle any claim with an ultimate net loss equal to or less than two hundred thousand dollars ($200,000) in excess of the **retained limit** of the **Participant.**

3. The Executive Committee shall have the authority to settle any claim with an ultimate net loss equal to or less than the **Limit of Coverage** for the risk sharing pool layer, combined with any reinsurance retention of the **Authority**. However, such authority shall only apply to those claims where the ultimate net loss, as defined in the PLP MOC, is in excess of the settlement authority given to the Litigation Manager and above the **retained limit** of the **Participant** involved.

D. DISPUTES REGARDING MANAGEMENT OF CLAIM

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

2. When an appeal has been filed, the **Board** shall meet to hear the appeal. The decision of the **Board** will be final.

3. Where the Litigation Manager has the right to, and does, select legal counsel, the **Participant** for which such counsel was selected may appeal the selection to the Executive Committee. The decision of the Executive Committee shall be binding and final with no further right of appeal to the **Board.**

4. Where the Litigation Manager has the right to, and does, make reserve rights or deny coverage of a claim, the **Participant** may appeal the decision to the Executive Committee within thirty (30) days of the Litigation Manager's Decision by submitting the dispute in writing to PLAN's General Manager. Within ten (10) days of receipt, the General Manager or designee shall acknowledge receipt and place the matter on the agenda of the Executive

Committee for either its next scheduled meeting or for a special meeting to be held within thirty (30) days of the General Manager's receipt of the dispute, or as mutually agreed upon thereafter.. The decision of the Executive Committee will be final.

ARTICLE VI: PARTICIPATION

A. ELIGIBILITY AND APPLICATION

1. ELIGIBILITY

a) A new applicant must commit to at least three full **program years** of participation in this PLP.

b) Any **Member Entity** may apply to participate in the PLP by providing an adopted resolution of its governing body and such other information/materials as may be required. The applicant's resolution shall commit the applicant to three full **program years** of participation in the PLP, if accepted, and consent to be governed for liability coverage in accordance with the MPD, the MOC and other documents and policies adopted by the **Board**. The resolution may also state the **retained limit** desired by the applicant.

c) The application for participation shall be submitted at least thirty (30) days prior to the date of the last **Board** meeting of the **program year** to ensure the **Board** has adequate time to review and evaluate the acceptability of the applicant. It is recommended that an applicant only enter the PLP at the commencement of a new **program year**. If an applicant chooses to enter the PLP at any other time, the **Member Contributions** for the remainder of the **program year** will be pro-rated. The new **Participant** will begin coverage on the date that is mutually acceptable to the new **Participant** and the **Board**; however, the new **Participant** will be required to share losses with the other **Participants** of the PLP for the entire **program year.**

2. APPOVAL OF APPLICATION

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

B. PARTICIPANT DUTIES

1. The **Participants** shall provide payroll, using the State DE-9 form, and all other requested information in conformance with the policies adopted by the **Board.**
2. The **Participants** shall disclose activities not usual and customary in their operation.
3. The **Participants** shall at all times cooperate with the **Authority's Administrator**, Litigation Manager, **Third-Party Administrator**, and loss control personnel, regarding underwriting activities of the **Authority.**
4. Each year the **Authority** shall bill **Participants** for a liability **Member Contributions** for the next **program year**. The billings shall be due and payable in accordance with the Bylaws.
5. Billings may be made to **Participants** for a **program year** found to be actuarially unsound. All billings for payments to bring a **program year** into an actuarially sound condition are due and payable upon receipt.
6. Former **Participants** in the PLP shall be required to pay all applicable billings for the **program years** in which they participated. Delinquent billings, together with penalties and interest, shall be charged and collected from the **Participant** in accordance with the Bylaws.
7. Penalties and interest shall be charged against any amounts delinquent in accordance with the Bylaws.

C. TERMINATION

1. VOLUNTARY TERMINATION

a) A **Participant** shall not be permitted to withdraw from the PLP prior to the end of its commitment period of three full **program years and** shall be obligated for payment of Member Contributions for these three years.

b) A **Participant** which has maintained its participation in the PLP for three full **program years** may terminate its participation if, at least six months before the next **program year**, a written request to terminate participation is received from the **Participant.**

c) Any **Participant** seeking to terminate its participation without proper and timely notice shall be responsible for the full cost of the next **program year's** premium. The notice will be deemed effective for the **program year** following the year in which the additional premium is paid.

2. INVOLUNTARY TERMINATION

a) The **Board** may initiate termination of a **Participant** from the PLP for the following reasons:

i. Termination as a **Member Entity** of the **Authority;**

ii. Declination to cover the **Participant** by the entity providing excess coverage;

iii. Nonpayment of Member Contributions, premiums, assessments, or other charges;

iv. Frequent late payment of Member Contributions, premiums, assessments, and/or other charges, subject to interest and penalty charges;

v. Failure to timely provide requested underwriting information;

vi. Consistent poor loss history relative to the pool;

vii. Substantial change in exposures which are not acceptable in

this PLP; and/or

viii. Financial impairment that is likely to jeopardize this PLP's ability to collect amounts due in the future.

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

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

3. CONTINUED LIABILITY UPON TERMINATION

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

ARTICLE VII: TERMINATION AND DISSOLUTION OF THE PLP

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

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

ARTICLE VIII: AMENDMENTS

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

APPENDIX A

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

LITIGATION MATTERS

SUBJECT: Consideration and Recommendation of Approval of Liability Memorandum of Coverage Updates Clarifying SAM Coverage for the 2027/28 Program Year

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BACKGROUND AND HISTORY:

Annually, PLAN JPA staff reviews the Memorandum of Coverage (MOC) to ensure it remains relevant, consistent with industry best practices, and aligned with real-world claims experience. During the most recent review of the Liability Memorandum of Coverage, staff identified a potential ambiguity regarding PLAN JPA's coverage of sexual assault and molestation (SAM) claims.

Under its current form, Section IV – Exclusions, Paragraph X provides:

> 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.

Read narrowly, this language appears to preserve coverage only for claims alleging negligent hiring, employment, investigation, supervision, or reporting by a Member Entity. However, a public entity's liability may extend beyond those theories when an on-duty law enforcement officer is the alleged perpetrator.

In *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, the California Supreme Court held that a public entity may be held vicariously liable under the doctrine of respondeat superior for a sexual assault or battery committed by an on-duty police officer. The Court reasoned:

> "Our society has entrusted police officers with enforcing its laws and ensuring the safety of lives and property of its members. In carrying out these important responsibilities, the police act with the authority of the state. When police officers on duty misuse that formidable power to commit sexual assaults, the public employer must be held accountable for their actions. It is, after all, the state which puts the officer in a position to employ force and which benefits from its use." (*Mary M.*, 54 Cal.3d at 222.)

Given the precedent established in *Mary M.*, as well as the customary practices of comparable public entity risk pools, including CARMA, Litigation Management believes the current wording of Section IV, Paragraph X was not intended to eliminate coverage where a Member Entity is vicariously liable as a matter of law under the doctrine of respondeat superior.

Accordingly, assuming it was not the Board's intent to narrow the scope of coverage and exclude claims falling within the holding of *Mary M.*, Litigation Management recommends adding the following clarifying language to Section IV, Paragraph 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.
>
> **Liability imposed upon an Entity under the doctrine of respondeat superior pursuant to *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202 shall not be excluded, provided the alleged sexual abuse was committed by an on-duty peace officer acting under color of authority, and further provided that such liability remains recognized under applicable California law.**

This revision preserves the original exclusion while expressly clarifying that coverage extends to vicarious liability claims recognized under *Mary M.*, thereby eliminating ambiguity and aligning the MOC with both established California law and prevailing risk-pool practices.

STAFF RECOMMENDATION:

Staff recommends the Executive Committee recommend the Board of Directors approve the proposed edits to the 2027/28 Liability Memorandum of Coverage.

REFERENCE MATERIALS ATTACHED:

- Red-line version of the proposed 2027/28 Liability Memorandum of Coverage

MEMORANDUM OF COVERAGE – LIABILITY

Issue Date: July 1, 2027

CONTENTS

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: 07/01/2027 12:01 A.M., Pacific Time TO: 07/01/2028 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, 2027and 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 please 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 **Memorandums**.

R. **Participant** shall mean a **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 Section 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 Section A herein at the time of the **Occurrence**, then coverage is afforded by this **Memorandum**. 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 **Memorandum** 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.

Respondeat Superior liability pursuant to *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d. 202 is not excluded to extent the alleged **Sexual Abuse** was committed by an on-duty police officer who misused his/her official authority and to the extent such case law has not been overturned and or narrowed by subsequent decisions.

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.
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 is 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. 7/1/2026, forms part of a Memorandum No. PLAN 2026-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
City of Millbrae
City of Milpitas
City of Morgan Hill
City of Newark
City of Pacifica
Town of Portola Valley
Town of Ross
City of San Bruno
City of San Carlos
City of Saratoga
City of South San Francisco
City of Suisun City
Town of Woodside

POOLED LIABILITY ASSURANCE NETWORK

JOINT POWERS AUTHORITY

MEMORANDUM OF COVERAGE

ENDORSEMENT NO. 2

This ENDORSEMENT, effective 12:01 a.m. 7/1/2026, forms part of a Memorandum No. PLAN 2026-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
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 Woodside	$25,000

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