



1750 Creekside Oaks Drive, Suite 200, Sacramento, CA 95833
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<https://www.planjpa.org/>

**BOARD OF DIRECTORS MEETING
AGENDA**

**Thursday, June 17, 2021
9:30 a.m.**

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

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

Members of the public may observe and listen to the meeting telephonically. No physical location will be available from which members of the public may observe the meeting and offer public comment. Public comments may be submitted in advance of the meeting by emailing Katie Sullivan at katie.sullivan@sedgwick.com no later than 5 p.m. on Wednesday, June 16, 2021. If a member of the public would like to address the Board of Directors during the meeting, the person may email Ms. Sullivan during the meeting and, if timely received, Ms. Sullivan will read or summarize the email to the Board members.

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

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

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

* Reference materials enclosed with staff report.

- Page** **4.** **PUBLIC COMMENTS** - The Public may submit any questions in advance of the meeting by contacting Katie Sullivan at: katie.sullivan@sedgwick.com. This time is reserved for members of the public to address the Board relative to matters of the Board of Directors not on the agenda. No action may be taken on non-agenda items unless authorized by law. Comments will be limited to five minutes per person and twenty minutes in total.
- 5.** **POOLED LIABILITY PROGRAM**
- 3** *A. Expiring Program Structure and Renewal Options
 Recommendation: None
- 11** *B. Draft 2021/22 Liability Program Budget
 Recommendation: None
- 15** C. CARMA JPA Alternative
 Recommendation: None
- 16** D. Proposed Governing Document Changes
 Recommendation: None
- 6.** **POOLED PROPERTY PROGRAM**
- 45** *A. Expiring Program Structure and Renewal Options
 Recommendation: None
- 58** *B. Draft 2021/22 Property Program Budget
 Recommendation: None
- 60** C. Member Self-Insured Retention Alternatives
 Recommendation: None
- 61** *D. PLAN Obligations and Proposed Governing Document Changes
 Recommendation: None
- 7.** **CLOSING COMMENTS**
 This time is reserved for comments by Board members and/or staff and to identify matters for future Board business.
 A. Board of Directors
 B. Staff
- 8.** **ADJOURNMENT**

* Reference materials attached with staff report.

June 17, 2021

Agenda Item 5.A.

POOLED LIABILITY PROGRAM

SUBJECT: Expiring Program Structure and Renewal Options

BACKGROUND AND HISTORY:

Seth Cole, Senior Vice President at Alliant Insurance Services (Alliant), will be present to provide updates on PLAN JPA's liability reinsurance and excess insurance renewals.

RECOMMENDATION:

None

REFERENCE MATERIALS ATTACHED:

- PLAN JPA 2021 Reinsurance/Excess Liability Renewal Presentation



PLAN JPA
2021 Reinsurance/Excess
Liability Renewal

June 17, 2021

State of the Market – Liability

Reinsurance / Excess Liability

- Excess Liability coverage is hardening significantly
- Social inflation, years of high losses, aggressive litigation trends, and adverse results are driving the higher prices and tighter capacity in the excess casualty insurance space
- Areas of Concern
 - Law Enforcement Liability
 - Sexual Abuse and Molestation
 - Dangerous Conditions of Property
- Public agencies with a history of or exposure to large verdicts and liability settlements will continue to see increases and the marketplace for coverage will continue to retract

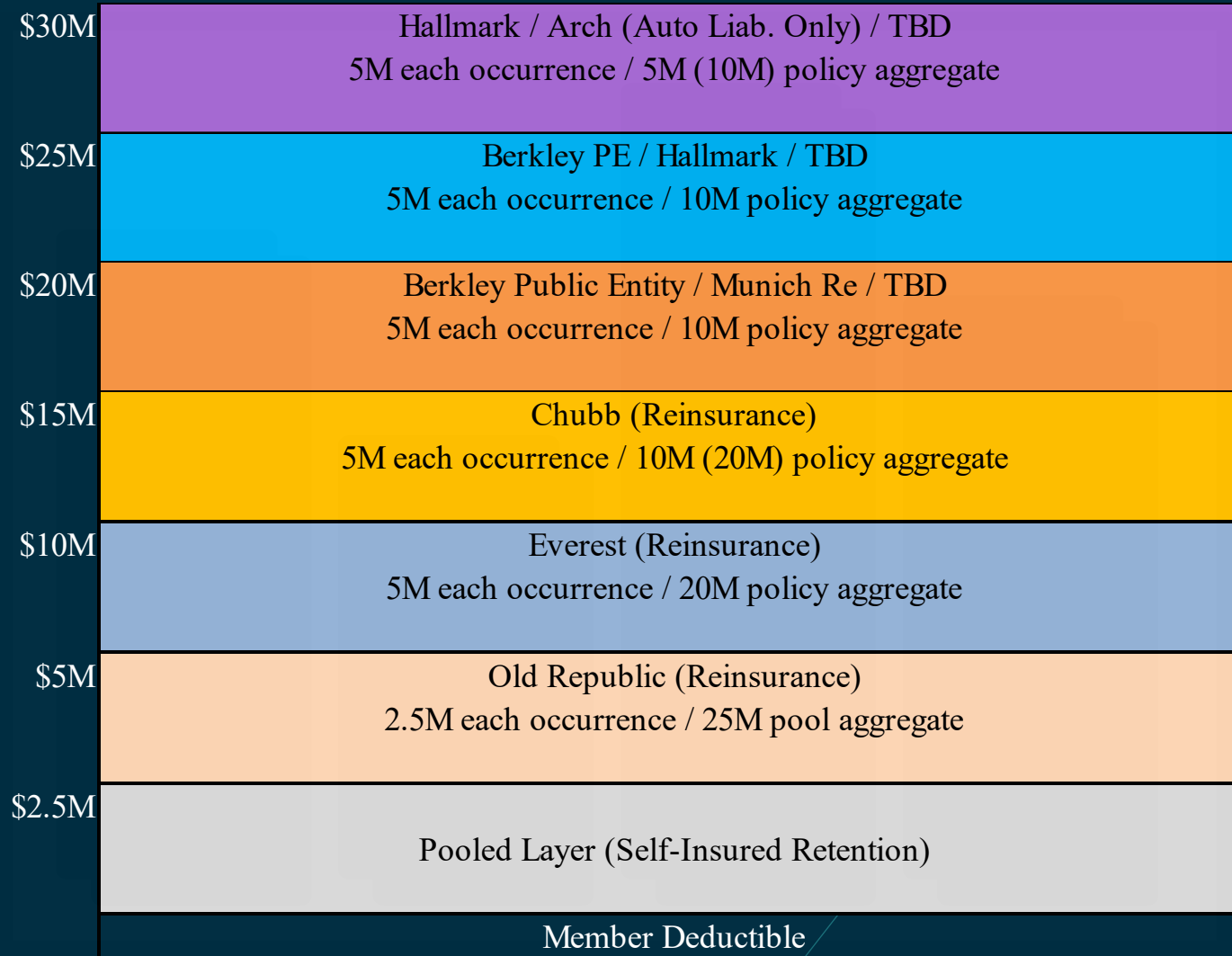
PLAN JPA Expiring Structure

\$30M	Arch 5M each occurrence / 5M policy aggregate									
\$25M	Hallmark 5M each occurrence / 10M policy aggregate									
\$20M	Berkley Public Entity 5M each occurrence / 10M policy aggregate									
\$15M	QBE 5M each occurrence / 10M policy aggregate									
\$10M	Peelus					Peelus				
	Coverage Applies Per Member					Coverage Applies Per Member				
	GL \$5M Limit & Agg	LEL \$5M Limit & Agg	\$5M Limit & Agg	EPL \$5M Limit & Agg	AL \$5M Limit	GL \$5M Limit & Agg	LEL \$5M Limit & Agg	\$5M Limit & Agg	EPL \$5M Limit & Agg	AL \$5M Limit
\$5M	Old Republic (Reinsurance) 2.5M each occurrence / 25M pool aggregate					Old Republic (Reinsurance) 2.5M each occurrence / 25M pool aggregate				
	Pooled Layer (Self-Insured Retention)					Pooled Layer (Self-Insured Retention)				
\$2.5M										
	Member #1					Member #2				

Markets Approached

- Old Republic (incumbent) - quoted
- Trident/Argonaut (incumbent) – non renewing
- QBE (incumbent) – non renewing
- Berkley Public Entity (incumbent) - reviewing
- Hallmark (incumbent) - reviewing
- Arch (incumbent) - reviewing
- Chubb - indication
- Munich Re – indication
- Everest – quoted
- Allied World - reviewing
- PRISM - reviewing
- Great American - declined
- Safety National - declined
- Applied Specialty - reviewing
- Lexington - declined
- Navigators - reviewing
- London / Bermuda – declined
- Arcadian - reviewing

Renewal Structure - Conceptual



Renewal Pricing - Estimate

\$5M x \$25M	\$500,000 <i>(est.)</i>
\$5M x \$20M	\$750,000 <i>(est.)</i>
\$5M x \$15M	\$1,200,000 <i>(est.)</i>
\$5M x \$10M	\$1,640,000 <i>(indication)</i>
\$5M x \$5M	\$2,500,000 <i>(quoted)</i>
\$2.5M x \$2.5M	\$1,796,630 <i>(quoted)</i>
\$27.5M x \$2.5M	\$8,386,630



Questions

POOLED LIABILITY PROGRAM

SUBJECT: Draft 2021/22 Liability Program Budget

BACKGROUND AND HISTORY:

The 2021/22 liability program draft budget was compiled using the same program structure as the expiring 2020/21 program structure. The 2021/22 budget breakdown is as follows:

PLAN Layer	\$	6,106,998
Reinsurance/Excess cost		8,390,002
Administration		2,228,157
Total	\$	<u>16,725,157</u>

In compiling the budget, the following changes were made:

Payroll Data Collection: At the March 2021 Special board meeting, the board approved gathering 5 years of payroll data from the member cities. Staff is pleased to report that the payroll data was collected from all the members in a timely fashion.

Liability Experience Modification (Ex-mod) Methodology Change: The current ex-mod methodology (which has been in place at least since 2002/03) is:

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

The proposed change to the ex-mod calculation beginning in the 2021/22 program is capping the annual ex-mod change at 30% from year to year.

Liability Contribution Capping: The current contribution methodology caps member contributions changes at 30% annually. At the March 2021 Special Board meeting, staff recommend moving away from capping contribution changes in favor of capping experience modification (above). However, due to the payroll basis changes (also above), staff recommended capping contributions at 40% in the 1st year of implementation (2021-22), 50% in the 2nd year (2022-23), and 60% in the 3rd year (2023-24). The 4th year contributions and all future years would then be uncapped in terms of liability contributions.

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Agenda Item 5.B.
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Becky Richard, Bickmore Actuarial, and Ritesh Sharma, Finance Manager, will be present to discuss the member allocations.

RECOMMENDATION:

None

REFERENCE MATERIALS ATTACHED:

- Liability Program Contribution Breakdown

PLAN JPA

Draft Operating Budget for 2021/2022 Summary of Contributions by Program

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

P/Y Actual	13,118,305	3,284,518	\$99,738	16,502,561
Incr./(Decr.)	\$ 3,606,851	\$ 1,888,479	\$ 19,948	\$ 5,515,277
% Change	27%	57%	20%	33%

Note:

Payroll comparison was obtained from the actuarial study. The payroll numbers are estimates that were used at the time of funding. The ex-mod comparisons were obtained from actuarial reports. Employment Liability coverage is through ERMA (Employment Risk Management Authority).

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

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

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

Funding for the Pool Layer @ 2.0%		
	20/21	21/22
Expected Undisc.	6,646,000	6,371,000
Expected Disc.	6,214,000	5,957,000
60% CL Disc.	6,377,000	6,107,000
70% CL Disc.	7,289,000	6,988,000
80% CL Disc.	8,488,000	8,149,000
90% CL Disc.	10,402,000	10,002,000

June 17, 2021

Agenda Item 5.C.

POOLED LIABILITY PROGRAM

SUBJECT: CARMA JPA Alternative

BACKGROUND AND HISTORY:

CARMA is an excess liability insurance JPA comprised of 5 risk and insurance JPA's. The total membership includes 104 California cities and 35 vector control districts. Member JPA's will participate in the 2021/22 program year at a \$1,000,000 per occurrence SIR with CARMA's pooled layer from \$1,000,000 to \$10,000,000 then reinsurance to \$15,000,000 and excess liability insurance up to a total program limit of \$40,000,000.

PLAN JPA's membership has been prospectively approved by the CARMA Board of Directors. PLAN would be joining CARMA at the pooled layer of \$9,000,000 excess of \$1,000,000 and would then need to procure liability reinsurance and excess insurance above \$10,000,000.

Staff will present an analysis of comparable (with and without CARMA participation) program structures and pricing as well as the potential benefits and concerns of joining an excess liability pool such as CARMA.

CARMA representatives, Rob Kramer (Administrator) and Dan Schwarz (CARMA Vice President and City of Larkspur City Manager), will be present to discuss CARMA and answer any questions from the Board.

RECOMMENDATION:

None

REFERENCE MATERIALS ATTACHED:

None

POOLED LIABILITY PROGRAM

SUBJECT: Proposed Governing Document Changes

BACKGROUND AND HISTORY:

It is best practice for the Board to review PLAN's Liability Memorandum of Coverage (MOC) annually to ensure it is up to date on language and provide any necessary clarifications to coverages. PLAN staff will be in attendance to present recommendations to update the PLAN JPA Liability MOC for the 2021/22 program year.

Additionally, there were several changes in procedures that were authorized by the Board during 2020/21 (i.e. payroll collection for form basis) plus several new proposed changes to budgeting methodology for Board consideration. Staff recommends that each of these changes, as well as reference to prior processes and methodology, be documented in the PLAN liability program governing documents.

Finally, should the Board authorize joining CARMA for the 2021/22 liability program year, there are several additional changes required to our current governing documents. These include:

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

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

RECOMMENDATION:

None

REFERENCE MATERIALS ATTACHED:

- PLAN JPA 2021/22 Draft Liability Memorandum of Coverage



MEMORANDUM OF COVERAGE – LIABILITY

Issue Date: July 1, 202~~1~~0

MEMORANDUM OF COVERAGE -- LIABILITY

DECLARATIONS

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

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

COVERAGE PERIOD: FROM: 7/1/202~~10~~ 12:01 A.M., Pacific Time
TO: 7/1/202~~2~~4 12:01 A.M., Pacific Time

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

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

SECTION I- DEFINITIONS

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

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

the maximum possible water storage elevation;

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

3. Has an impounding capacity of fifty (50) acre-feet or

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

1. Any artificial barrier, together with appurtenant works, which does or may impound or divert water, but which is not in excess of six (6) feet in height, regardless of storage capacity;

2. Any artificial barrier, together with appurtenant works, which does or may impound or divert water, but which has a storage capacity not in excess of fifteen (15) acre-feet, regardless of height;

3. Any obstruction in a canal used to raise or lower water therein or divert water therefrom;

4. Any levee, including but not limited to a levee on the bed of a natural lake, the primary purpose of which levee is to control floodwaters;

5. Any railroad fill or structure;

6. Any tank constructed of steel or concrete or of a combination thereof;

7. Any tank elevated above the ground;

8. Any barrier which is not across a stream channel, watercourse or natural drainage area, and which has the principal purpose of impounding water for agricultural use; and

9. Any obstruction in the channel of a stream or watercourse which is fifteen (15) feet or less in height from the lowest elevation of the obstruction and which has the single purpose of spreading water within the bed of the stream or watercourse upstream from the construction for percolation underground.

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

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

Damages does not include:

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

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

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

I. **Defense Costs** means:

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

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

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

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

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

benefit plans:

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

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

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

K. **Entity** means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION II- WHO IS A COVERED PARTY

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

and used by such person or organization, or

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

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

SECTION III - COVERAGES

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

A. **Bodily Injury**,

B. **Property**

Damage, C. **Personal**

Injury,

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

or E. **Employee Benefit Plan Administration**

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

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

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

SECTION IV - EXCLUSIONS

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

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

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

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

1. Any action or inaction affecting the use of, or rights or entitlements in, any real property or improvements to real property;
2. Any action or inaction on any data collecting, analysis, study, finding, policy, ordinance, statute, code, law, regulation or program that directly or indirectly affects the use of, or rights or entitlements in, any real property or improvements to real property; and
3. Any announcement or publication concerning the circumstances described in subparts a and b.

- H. For an inverse condemnation claim arising solely out of the non-negligent operation of any public improvement, however acquired; provided, that such circumstances shall not include the reverse flow of sewage, water and/or other contents through a sanitary sewer system and out of an inlet of such a system.
- I. For **Public Officials Errors and Omissions Injury** arising out of noncompliance with, or violation of, any statute, regulation, rule, Executive Order, circular, audit or recordkeeping standard, permit, license, administrative ruling, or the like. This exclusion applies regardless of the means taken, or available to, enforce a remedy for the noncompliance or violation.
- J. Arising out of a **Covered Party's** ownership, operation, use, maintenance, or entrustment to others of any **Aircraft** or **Watercraft**.

This exclusion does not apply to claims arising out of the operation, ownership, maintenance or use or entrustment to others of any **Unmanned Aerial Vehicle** owned or operated by or rented to or loaned by or on behalf of any **Covered Party** if operated in accordance with all applicable federal, state, and local laws, rules and regulations, including but not limited to Federal Aviation Administration (FAA) rules and regulations detailed in part 107 of Title 14 of the Code of Federal Regulations.

- K. Arising out of any transit authority, transit system or public transportation system owned or operated by a **Covered Party**; but this exclusion does not apply to any transit system operating over non-fixed routes, including dial-a-ride, senior citizen transportation or handicapped transportation.
- L. Claims arising out of the failure to supply or provide an adequate supply of gas, water, electricity, storm drainage or sewage capacity when such failure is a result of the inadequacy of the **Entity's** facilities to supply or produce

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

- M. Arising out of any obligation to pay compensation or benefits (or other monetary sums) under workers' compensation, disability benefits or unemployment compensation law or any similar law.
- N. For **Bodily Injury, Property Damage, Personal Injury, or Public Officials Errors and Omissions Injury** to:
 - 1. An employee, volunteer, elected or appointed official of a **Covered Party** arising out of and in the course of:
 - a. Employment by a **Covered Party**; or
 - b. Performing duties related to the conduct of a **Covered Party's** activities;
 - or
 - 2. The spouse or partner, child, parent, brother, sister or other relative of that employee, volunteer, elected or appointed official, as a consequence of paragraph (1) above.

This exclusion applies:

 - a. Whether the **Covered Party** may be liable as an employer or in any other capacity; and who must pay, any amount because of the injury.
- O. Arising out of any:
 - 1. Refusal to employ, elect, or appoint any person, or to allow any person to participate as a volunteer
 - 2. Termination of any person's employment or volunteer participation, or termination of any person's position as an elected or appointed official

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

This exclusion applies:

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

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

Employee Benefits Administration

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

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

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

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

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

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

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

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

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

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

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

SECTION V - DEFENSE AND SETTLEMENT

A. Defense Of Claims Or Suits.

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

5. The **Covered Party** must disclose to **PLAN** all information concerning the claim or suit (including but not limited to all facts giving rise to the claim or suit) which may assist in the defense of the claim or suit. The **Covered Party** is required to provide such information even if the information may relate to or affect matters pertaining to coverage under this **Memorandum**. The **Covered Party** shall instruct its defense counsel to disclose all such information to **PLAN**, and hereby waives any and all privileges (including but not limited to the attorney/client privilege and the attorney work product privilege) to the extent necessary to allow for the disclosure of that information to **ABAGPLAN**. 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.

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B. Settlement Of Claims Or Suits.

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

SECTION VI - LIMIT OF COVERAGE

A. Limit Of Coverage - Per Occurrence.

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

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

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

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

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

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

SECTION VII - CONDITIONS

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

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

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

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B. Bankruptcy.

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

C. Insurance.

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

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

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

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

D. Cancellation.

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

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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 **Risk Coverage Agreement** **Liability Program Master Program Document**.

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

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

G. **Premium.**

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

POOLED LIABILITY ASSURANCE NETWORK
JOINT POWERS AUTHORITY

MEMORANDUM OF COVERAGE

ENDORSEMENT NO. 1

This ENDORSEMENT, effective 12:01 a.m. 7/1/~~2118~~²¹¹⁹, forms part of a Memorandum No. PLAN20~~2118~~²¹¹⁹-GL.

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

Pooled Liability Assurance Network,

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

POOLED LIABILITY ASSURANCE NETWORK
JOINT POWERS AUTHORITY

MEMORANDUM OF COVERAGE

ENDORSEMENT NO. 2

This ENDORSEMENT, effective 12:01 a.m. 7/1/2119, forms part of Memorandum No. PLAN202118-GL.

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

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

POOLED PROPERTY PROGRAM

SUBJECT: Expiring Program Structure and Renewal Options

BACKGROUND AND HISTORY:

Seth Cole, Senior Vice President at Alliant Insurance Services (Alliant), will be present to provide updates on PLAN JPA's property, cyber, and pollution excess insurance renewals.

RECOMMENDATION:

None

REFERENCE MATERIALS ATTACHED:

- PLAN JPA 2021 Property, Cyber, Pollution Renewal



PLAN JPA 2021 Property, Cyber, Pollution Renewal

June 17, 2021

State of the Market – Property and Cyber

Property

- 2020 was 5th worst loss year ever
- Record number of weather related events with greater than \$1 Billion in damage
- 2021 will set record for most claims in history of industry for Q1 and will extend difficult market

Cyber

- Cyber crime expected to reach \$6 Trillion in 2021
- Average paid loss rose to \$359K in 2020 from \$145K in 2019
- Public entities are one of the most targeted industries
- Pools are seeing 100% - 500% premium increases at renewal
- Many carriers will not write public entities or pools any longer

Marketing Strategy and Results

Specifically for Pools in APIP

Alliant marketed 15 pools due to expected rate increase

Utilized same underwriters and wholesalers

Large premium volume was intended to grab the attention of underwriters

Approached over 50 markets

Outcome: 1-3 pools possibly will leave APIP

Markets Approached

Markets Approached (Direct and via Intermediaries)

FM Global	Commonwealth	Westchester
Allianz	Crum & Forster	Lloyds of London
C N A	Endurance	Houston Casualty
Chubb	Great American	Rokstone
HDI	James River	Inigo
Liberty Mutual	Kemah	RSA
Sompo	Kinsale	Convex
The Hartford	Mitsui	Partner Re
Travelers	Munich RE	Lancashire
Zurich	Rivington Partners	Scor
Arrowhead	Scottsdale	Hannoover
Aspen	SRU	Unicorn
Ategrity	Starr	Alcor
Axis US	Tokio Fire & Marine	Markel
AWAC	Velocity	Hamilton

Marketing Results

Options for Pools in this Marketplace

Option 1: Alliant Property Insurance Program Shared and Layered Program

- 35% - 40% rate increase for the “good guys”; 50% + for the loss leaders

Option 2: Standalone Shared and Layered Program

- Could not be competitive with current or renewal premium

Option 3: Single Carrier

- Travelers

PLAN JPA Renewal Quote / Indications

Coverage Item	APIP	London*	AXIS*
Limit	\$1,000,000	\$25,000,000	\$50,000,000
Cyber	Included	Not Included	Not Included
Pollution	Included	Not Included	Not Included
Property Retention	\$500,000	\$500,000 (\$1M Agg.) / \$1M Wildfire	\$225,000 / \$2M Wildfire
Renewal Premium / <i>Indication*</i>	\$3,808,488	\$4,500,000	\$6,400,000

Anticipated APIP Changes (Property)

Description	2020-2021	2021-2022
Money & Securities Sub-limit	\$2,500,000 sub-limit	<ul style="list-style-type: none"> • \$500,000 sub-limit • Added exclusion for “fraudulent impersonation, fraudulent instruction or similar events”
Auto Physical Damage Deductibles	Varies by insured	<ul style="list-style-type: none"> • \$25K if RCV < \$250K, per occ • \$100K if RCV > \$250K - \$750K, per occ • \$250K if RCV > \$750K, per occ • Police Cars \$50K if RCV < \$250K. If RCV is greater than \$250K the other deductible structure above apply • <u>As expiring for autos with ACV (\$100K PLAN JPA)</u>
Course of Construction REPORT ALL COC's no matter their size but charge only for >15M	<ul style="list-style-type: none"> • \$25M Sub-limit • No additional premium for projects < \$25M 	<ul style="list-style-type: none"> • \$25M Sub-limit • No additional premium for projects < \$15M

Anticipated AIP Changes (Property)

Description	2020-2021	2021-2022
JPA Pool Deductible	\$250,000	\$500,000
Automatic Acquisition Sub-limit	\$25,000,000	<ul style="list-style-type: none"> \$25M for TIV* \geq500M \$10M for TIV* $<$500M <p>*Named Insured Binding TIV</p>
Automatic Acquisition Vacant Buildings Sub-limit	\$25,000,000	\$10,000,000
Miscellaneous Unnamed Loc. Sub-limit	\$25,000,000	<ul style="list-style-type: none"> \$25M for TIV* \geq500M \$10M for TIV* $<$500M <p>*Named Insured Binding TIV</p>
Miscellaneous Unnamed Loc. Vacant Building Sub-limit	\$25,000,000	\$10,000,000

Anticipated AIP Changes (Property)

Description	2020-2021	2021-2022
Impending Collapse The intent is not to insure dilapidated buildings that would possibly collapse	No exclusion	New exclusion for: a. Building or any part of a building that is in danger of falling down or caving in, or b. Any part of a building that has separated from another part of the building. For newly acquired locations with the above conditions existing at the time of acquisition.
Transit	PD & BI Coverage	PD coverage only
LMA 5400 Cyber Exclusion	Applicable to specific carriers	Applicable to all carriers

Anticipated AIP Changes (Cyber)

Coverage	2020-2021	2021-2022 Proposed Changes	Status
Beazley Breach Response Endorsement	Coverage offered	Underwriting required	Change in Availability
Retention Buy-Down Endorsement	Coverage offered	Underwriting required	Change in Availability
Increase Breach Response Cost	Coverage offered	Underwriting required	Change in Availability
Tech Errors & Omissions	Coverage offered	Underwriting required	Change in Availability
Retention	Retention Level either \$50k or \$100k based on TIV	Retention Level either \$50k, \$100k, or \$250k based on TIV	Change in Retention
Computer Hardware Replacement Costs	\$75,000 per Member annual aggregate sublimit	\$100,000 per Member annual aggregate sublimit	Increase in Sublimit
Reputation Loss	\$50,000 per Member annual aggregate sublimit	\$100,000 per Member annual aggregate sublimit	Increase in Sublimit
Business Interruption – Security Failure	\$2,000,000 per Member annual aggregate Limit	\$750,000 per Member annual aggregate sublimit	Decrease in Sublimit
Cyber Extortion	\$2,000,000 per Member annual aggregate Limit	\$750,000 per Member annual aggregate sublimit	Decrease in Sublimit
Data Recovery Costs	\$2,000,000 per Member annual aggregate Limit	\$750,000 per Member annual aggregate sublimit	Decrease in Sublimit
War and Civil War Exclusion	Not Excluded	Exclusion Added	Excluded
Policy Aggregate Limit	\$45,000,000	\$40,000,000	Decrease in aggregate

Anticipated APIP Changes (Environmental)

- Incumbent (Allianz) non-renewed.
- Changes at renewal include:
 - Retroactive Date
 - 7/1/11 for Waste Disposal
 - 7/1/21 for All Other
 - Company: Ironshore Specialty Ins. Co.
 - No coverage for Crisis Response Costs
 - Increased retentions
 - \$250,000
 - \$500,000 Sewage Backup (*coverage for backup at insured site only*)
 - \$500,000 (pollution incident prior to 7/1/21)
 - Sublimit applies to coverages for mold and Legionella
 - Cyber excluded
 - Known and prior claims excluded



Questions

June 17, 2021

Agenda Item 6.B.

POOLED PROPERTY PROGRAM

SUBJECT: Draft 2021/22 Property Program Budget

BACKGROUND AND HISTORY:

The Property program budget is presented at the 70% CL with a 2% discount factor. The proposed 2021/22 program structure is to pool losses from the members' SIR (\$5,000) up to \$500,000 (prior year SIR was \$225,000) per occurrence with zero aggregate deductible and excess coverage purchased to \$1 Billion. Specific to auto physical damage (APD) coverage, first party vehicle losses are similarly pooled from the members' SIR (\$5,000) up to \$100,000 rather than \$225,000 with zero aggregate deductible.

The 2021/22 property program budget breakdown is as follows:

PLAN Layer	\$	1,023,000
Excess Property cost		3,799,997
Excess Cyber Coverage		350,000
Total	<u>\$</u>	<u>5,172,997</u>

Due to changes in the Property SIR and the elimination of the aggregate deductible, staff will discuss alternative options for confidence level funding and program surplus. For reference, the estimated Property program fund balance will be \$499,312 as of June 30, 2020.

Becky Richard, Bickmore Actuarial, and Ritesh Sharma, Finance Manager, will be present to discuss the member allocations.

RECOMMENDATION:

None

REFERENCE MATERIALS ATTACHED:

- Property Program Contribution Breakdown

PLAN JPA

Draft Operating Budget for 2021/2022

Property Program Contributions Schedule

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

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

Notes:

- Note 1: 2020/21 Total Insured property values obtained from Alliant.
- Note 2: 2021/22 Total Insured property values as submitted by members. Updated as of 05/27/21
- Note 3: Rate for PLAN pool (from actuarial report dated **June 2, 2021**) allocated using Note 2.
- Note 4: Estimated Premium by Alliant Property Insurance Program (APIP).
- Note 5: Flood cost are based upon 2020/21 premiums with a 10% increase in premiums.
- Note 6: Excess Cyber coverage: minimum \$1K per member and remaining allocated based upon payroll.
- Note 7: Total 2021/22 Contributions by member (Total Notes 3 through 6).
- Note 8: 2020/21 Contributions

Funding for the Pooled Layer

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

June 17, 2021

Agenda Item 6.C.

POOLED PROPERTY PROGRAM

SUBJECT: Member Self-Insured Retention Alternatives

BACKGROUND AND HISTORY:

The Property program budget is presented at the 70% CL with a 2% discount factor. The proposed 2021/22 program structure is to pool losses from the members' SIR (\$5,000) up to \$500,000 (prior year SIR was \$225,000) per occurrence with zero aggregate deductible and excess coverage purchased to \$1 Billion. Specific to auto physical damage (APD) coverage, first party vehicle losses are similarly pooled from the members' SIR (\$5,000) up to \$100,000 rather than \$225,000 with zero aggregate deductible.

As a cost saving strategy, staff will present member SIR options at \$15K and \$25K.

RECOMMENDATION:

None

REFERENCE MATERIALS ATTACHED:

None

POOLED PROPERTY PROGRAM

SUBJECT: PLAN Obligations and Proposed Governing Document Changes

BACKGROUND AND HISTORY:

It is best practice for the Board to review PLAN's Property Memorandum of Coverage (MOC) annually to ensure it is up to date on language and provide any necessary clarifications to coverages. Specifically, staff is recommending updates to clarify PLAN and member obligations for specific coverage areas including unscheduled infrastructure, cyber, and pollution claims.

Additionally, depending on Board direction for the 2021/22 property program structure, it may be necessary to amend the Property Master Program document specific to confidence level funding, target surplus equity, and/or other program changes.

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

RECOMMENDATION:

None

REFERENCE MATERIALS ATTACHED:

- PLAN Property MOC Draft 2021/22

POOLED LIABILITY ASSURANCE NETWORK JPA

PROPERTY MEMORANDUM OF COVERAGE

PROGRAM YEAR: 2021-2022

DECLARATIONS

1. Coverage Provider

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

2. Members

As per the “Schedule of Covered Members”

3. PLAN Mailing Address

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

4. Coverage Period

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

5. Territory

This Memorandum of Coverage applies while the property is within the United States, Canada, or Puerto Rico, and in due course of transit including airborne or waterborne between points and places therein, except that coverage does not apply to (1) waterborne shipments via the Panama Canal,

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

6. Limits of Liability

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

7. Self-Insured Retention

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

SCHEDULE OF COVERED MEMBERS

The following are included as Members:

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

SECTION I GENERAL CONDITIONS

1. Coverage Agreement

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

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

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

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

2. Limits of Liability

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

3. Losses Excluded

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

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

4. Assignment

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

5. Loss Clause

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

6. Other Insurance

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

7. Excess Insurance

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

8. Underlying Insurance

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

9. Inspection and Examination

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

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

10. Protection of Property

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

11. Notice of Loss

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

12. Abandonment

There can be no abandonment of any property to PLAN.

13. Conformance

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

15. Subrogation

In the event of any payment under this Memorandum of Coverage, PLAN shall be subrogated to all the member's rights of recovery therefor against any person or organization, and the member shall execute and deliver

instruments and papers and do whatever else is necessary to secure such rights. The member shall do nothing after loss to prejudice such rights.

16. APIP USA

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