

BAY CITIES JOINT POWERS INSURANCE AUTHORITY

SPECIAL EXECUTIVE COMMITTEE MEETING

AGENDA

Thursday, September 28, 2023

9:00 a.m.

Via Zoom Teleconference

[Zoom Link](#)

Meeting ID: 836 8142 3655

Passcode: 729784

All portions of this meeting will be conducted by teleconference in accordance with Government Code Section 54953(b). The teleconference meeting locations are as follows:

- CENTRAL MARIN FIRE AUTHORITY: 250 Doherty Drive, Larkspur, CA 94939
- CITY OF BERKELEY: 2180 Milvia Street, Berkeley, CA 94704
- CITY OF MILL VALLEY: 26 Corte Madera Avenue, Mill Valley, CA 94941
- CITY OF LARKSPUR: 400 Magnolia Avenue, Larkspur, CA 94939
- CITY OF LOS ALTOS: 1 N. San Antonio Road, Los Altos, CA 94022
- CITY OF PLEASANTON: 123 Main Street Pleasanton, CA 94566

Each location is accessible to the public, and members of the public may address the Board 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 John Burdette at (916) 367-2147 or John.Burdette@sedgwick.com. 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 provided to the Bay Cities Joint Powers Insurance Authority (BCJPIA) less than 72 hours prior to a regular meeting will be available for public inspection. Please contact John Burdette at (916) 367-2147 or John.Burdette@sedgwick.com

- | <u>Page</u> | |
|-------------|---|
| 1. | CALL TO ORDER |
| 2. | INTRODUCTIONS |
| 3. | APPROVAL OF AGENDA AS POSTED (OR AMENDED) |
| 4. | PUBLIC COMMENTS - The Public may submit any questions in advance of the meeting by contacting John Burdette at: John.Burdette@sedgwick.com . This time is reserved for members of the public to address the Committee relative to matters of the BCJPIA 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. |

* Reference materials attached with staff report.

5. CONSENT CALENDAR

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

6 *A. Minutes of the August 17, 2023, Executive Committee Meeting

15 *B. Workers' Compensation Program Lag Report as of June 30, 2023

Recommendation: Staff recommends the Committee approve the Consent Calendar as presented.

6. MEMBERSHIP MATTERS

16 *A. Discussion Regarding City of Sausalito and City of Monte Sereno

Recommendation: None.

7. CLOSED SESSION – Pursuant to Government Code Sections 54956.9(d)(2) and 54956.95, the Committee will hold a closed session to discuss the following matters:

Sausalito Homeless Union v. City of Sausalito
Whiskey Springs v. City of Sausalito

Pursuant to Government Code Section 54956.95(a), the Committee will hold a closed session to discuss the claims for the payment of tort liability losses, workers' compensation losses, or public liability losses incurred by the Joint Powers Authority:

Liability Claims

Rose v. City of Larkspur
Doe v. Boyes (City of Sausalito)
Alvarez v. City of Pleasanton
Barstow v. City of Pleasanton
Bowers v. City of Pleasanton
Dunkley Trust v. City of Pleasanton
Gumina v. City of Pleasanton
Holloway v. City of Pleasanton
Khong v. City of Pleasanton
Kuchareski v. City of Pleasanton
PRI Sunol LLC dba Sunol Memory Care v. City of Pleasanton
Tashima v. City of Pleasanton
Yankovich v. City of Pleasanton
Longo v. City of Redwood City
Lieu & Delfs v. City of Redwood City
Selner v. City of Redwood City
Villa Montgomery Apartments v. City of Redwood City
Dinihanian v. City of Sausalito
Dubowitz v. City of Sausalito
Goff v. City of Sausalito
Kerr, Dayton v. City of Sausalito

* Reference materials attached with staff report.

Lalanne v. City of Sausalito
Portje v. City of Sausalito
Powelson, R. v. City of Sausalito
Powelson, R. v. City of Sausalito
Procter v. City of Sausalito
Sausalito Homeless Union v. City of Sausalito
Sausalito Yacht Harbor v. City of Sausalito
Schultz v. City of Sausalito
Strawbridge v. City of Sausalito
Wahl v. City of Sausalito
Whiskey Springs v. City of Sausalito
Wild v. City of Sausalito

REPORT FROM CLOSED SESSION - Pursuant to Government Code Section 54957.1, the Committee must report in open session any action taken, or lack thereof, in closed session.

8. ADMINISTRATIVE MATTERS

- 57 *A. Direction from Executive Committee regarding the City of Sausalito and City of Monte Sereno
 Recommendation: Staff is seeking direction from the Executive Committee.
- 58 *B. BCJPIA Excess General Liability Coverage for 2024/25
 Recommendation: Staff is seeking direction from the Executive Committee.
- 59 *C. Review of Draft Resolution Outlining Allocation of CARMA Sub and Aggregate Limits for Inverse Condemnation Claims Incurred During the 2022/23 Program Year.
 Recommendation: Staff recommends the Executive Committee recommend Board approval of draft Resolution 01-2023/24 Outlining Allocation of CARMA Sub and Aggregate Limits for Inverse Condemnation Claims Incurred During the 2022/23 Program Year.
- 63 *D. Proposed Changes to the Workers' Compensation Memorandum of Coverage
 Recommendation: Staff will make a recommendation at the meeting.

9. CLOSING COMMENTS - This time is reserved for comments by the Committee and/or staff and to identify matters for future BCJPIA business.

- A. Executive Committee
- B. Staff

10. ADJOURNMENT

NOTICES:

- The next BCJPIA Board of Directors meeting will be held on Thursday, October 26, 2023, at the Silverado Resort in Napa, CA.
- The next Employment Risk Management Authority (ERMA) Board of Directors meeting will be held on Monday, November 6, 2023, in Sacramento, CA. The BCJPIA Alternate representative to the ERMA Board is Jon Maginot, City of Los Altos.
- The next Local Agency Workers' Compensation Excess JPA (LAWCX) Board of Directors meeting will be held on Tuesday, November 7, 2023, Via Zoom Teleconference.
- The next BCJPIA Executive Committee meeting will be held on Thursday, December 14, 2023, via Zoom teleconference.
- The next California Affiliated Risk Management Authorities (CARMA) Board of Directors meeting will be held Friday, January 12, 2024, in Napa, CA.

SEPTEMBER 28, 2023

Agenda Item 5.A.-B.

CONSENT CALENDAR

SUBJECT: Consent Calendar
 Prepared and Presented by Jaesa Cusimano, BCJPIA Executive Director

BACKGROUND AND STATUS:

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

RECOMMENDATION:

Staff recommends the Committee approve the Consent Calendar as presented.

REFERENCE MATERIALS ATTACHED:

- *A. Minutes from the August 17, 2023, Executive Committee Meeting
- *B. Workers' Compensation Program Lag Report as of June 30, 2023

BAY CITIES JOINT POWER INSURANCE AUTHORITY (BCJPIA)
EXECUTIVE COMMITTEE MEETING OF
AUGUST 17, 2023

A regular meeting of the Executive Committee was held on August 17, 2023, via Zoom Teleconference.

MEMBERS PRESENT: Dan Schwarz, President, City of Larkspur
Julie Harryman, Vice President, City of Pleasanton
Rueben Martin, Central Marin Fire Authority
Marc Shapp, City of Berkeley
Jon Maginot, City of Los Altos
Todd Cusimano, City of Mill Valley

MEMBERS ABSENT: None

OTHERS PRESENT: Jaesa Cusimano, BCJPIA Executive Director
Yahaira Velazquez, BCJPIA Assistant Executive Director
John Burdette, BCJPIA Administrative Assistant
Will Portello, BCJPIA Litigation Manager
Cheyenne Deary, BCJPIA Litigation Analyst
Josie Stijepovic, BCJPIA Risk Control Manager
Jackie Miller, BCJPIA Workers' Compensation Manager
Lam Le, BCJPIA Finance Manager
Tony Pasquarello, Sedgwick Finance Director
Kellie Murphy, BCJPIA Legal Counsel

1. CALL TO ORDER

The August 17, 2023, Executive Committee Meeting was called to order at 9:05 a.m. by President Dan Schwarz.

2. INTRODUCTIONS

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

3. APPROVAL OF AGENDA AS POSTED (OR AMENDED)

Todd Cusimano moved to approve the agenda as posted. Motion was seconded by Ruben Martin. The motion passed unanimously by Ruben Martin, Julie Harryman, Todd Cusimano, Dan Schwarz, and Jon Maginot.

4. PUBLIC COMMENTS

None

5. MEMBER UPDATES

A. Update on BCJPIA Officer, Committee, and Representative Vacancies

Jaesa Cusimano, BCJPIA Executive Director, provided an update regarding the vacancies on the Executive Committee, the Treasurer position as well as the ERMA Board representative position. She noted that with Heather Rowden leaving the City of Albany, the Treasurer position and the ERMA Board representative positions need to be filled. Jon Maginot, City of Los Altos, agreed to be appointed as the Treasurer by the Board in October. Additionally, with John Tulloch leaving the City of Piedmont, there is also a vacancy on the Executive Committee and Marc Shapp, City of Berkeley, was nominated to serve by the Nominating Committee. Mr. Shapp will be serving on an interim basis until the Board officially appoints him in October. Ms. Cusimano stated staff will continue to look for someone to serve as the ERMA Board representative.

Julie Harryman moved to appoint Marc Shapp as a representative on the Executive Committee. Motion was seconded by Todd Cusimano. The motion passed unanimously by Ruben Martin, Julie Harryman, Todd Cusimano, Dan Schwarz, Marc Shapp, and Jon Maginot.

6. CONSENT CALENDAR

Julie Harryman moved to approve the consent calendar items: A) Minutes from the April 27, 2023, Executive Committee Meeting; B) Warrant Listings for the Period April 1, 2023 – July 31, 2023; C) Cash and Investment Report as of June 30, 2023; D) Internal Financial Statements as of June 30, 2023; E) Member Contingency Fund Balance as of June 30, 2023; F) CARMA E-brief – April 2023; G) ERMA April Summary of Action Items; H) Workers' Compensation Legislative Updates. Ruben Martin seconded the motion. The motion passed unanimously by Ruben Martin, Julie Harryman, Todd Cusimano, Dan Schwarz, Marc Shapp, and Jon Maginot.

7. ADMINISTRATIVE MATTERS

A. Format of the October 26, 2023, Strategic Planning Session

Ms. Cusimano presented a draft agenda for the upcoming Strategic Planning Session (SPS) taking place on October 26-27, 2023, in conjunction with the Board meeting in Napa, California.

She reminded the Committee the facilitator will be Rick Brush from Brush Strokes Consulting noting Mr. Brush plans to distribute a survey to gauge the Board's perspective on emerging issues as well as to prepare them to have meaningful discussion during the session.

The Committee directed staff to work with President Schwarz to finalize the format of the SPS, the agenda, and any other details.

B. Review of Members that Qualify for the Member Assistance Program Per Resolution 02-2022/23

Ms. Cusimano briefly provided a summary of the Member Assistance Program noting that this program was approved via Resolution 02-2022/23 by the Board in February of this year. She reminded the Committee that the purpose of implementing this program is to give staff and the Board the opportunity to identify potentially concerning trends in member's loss history in the General Liability (GL) and Workers' Compensation (WC) Programs and to have a system in place to provide those members with additional resources in an attempt to help them improve their loss history.

Lam Le, BCJPIA Finance Manager, reviewed loss ratios for the GL and WC programs noting the reports included in the agenda utilized five years of loss history for all members.

Upon reviewing the analysis presented by Mr. Le, the Committee expressed two members stood out due to the severity of their losses versus their contributions into the pool: City of Sausalito and City of Monte Sereno. After further discussing whether the Member Assistance Program resources would benefit the two agencies, the Committee agreed it would not given these two cities have had ongoing issues for the past several years that BCJPIA resources would not resolve. No other members stood out as potential candidates for this program.

As such, the Committee directed staff to schedule a special Executive Committee meeting to separately discuss the two members' overall participation in BCJPIA. The Committee requested staff bring forth Sausalito's and Monte Sereno's 10-year loss history, contributions to the pool, meeting participation and engagement, as well as alternative options that the two members may have for coverage in the future.

C. Discussion of Use of LAWCX Funds for 2023/24

Josie Stijepovic, BCJPIA Risk Control Manager, reported BCJPIA has \$2,000 available via BCJPIA's participation in the Local Agency Workers' Compensation Excess JPA (LAWCX). She stated the funds can be used for risk control purposes that may help mitigate workers' compensation claims. Ms. Stijepovic recommended the funds be used for a 1.5 hour virtual training by Rachel Shaw, Shaw HR Consulting, titled, "The FEHA/ADA Disability Interactive Process and Reasonable Accommodation Requests". She noted the cost of this training is \$2,000.

Todd Cusimano moved to approve utilizing the \$2,000 LAWCX risk control funds to cover the cost of the training session with Shaw HR Consulting. Julie Harryman seconded the motion. The motion passed unanimously by, Ruben Martin, Julie Harryman, Todd Cusimano, Dan Schwarz, Marc Shapp, and Jon Maginot.

8. FINANCIAL MATTERS

A. Discussion Regarding the Distribution of ERMA Dividends

Yahaira Velazquez, BCJPIA Assistant Executive Director, stated 18 of 21 BCJPIA members participate in the Employment Risk Management Authority (ERMA) for coverage up to \$1 million. She stated ERMA's Board approved the release of \$2.5 million in dividends to eligible members. Ms. Velasquez presented a breakdown of the ERMA dividends by member noting BCJPIA's share of the return is \$335,495. She stated in the past, members have elected to set aside these funds to cover the cost of the Liebert Cassidy Whitmore Library and Consortium memberships; however, BCJPIA has the next three years fully funded already. As such, staff recommended that the funds be deposited to each member's Member Contingency Fund.

Julie Harryman moved to approve depositing the ERMA dividends into each eligible member's Member Contingency Fund. Todd Cusimano seconded the motion. The motion passed unanimously by Ruben Martin, Julie Harryman, Todd Cusimano, Dan Schwarz, Marc Shapp, and Jon Maginot.

B. Discussion Regarding the Use of Surcharges vs Experience Modification Factors

Ms. Cusimano reported that over the last few years, there has been question as to whether utilizing experience modification (ex-mod) factors to calculate contributions is effectively shifting a meaningful amount of premium to those members whose loss experience is adversely impacting the pool. She stated the purpose of the ex-mod is to reduce volatility in contributions as well as to encourage members to reduce losses by implementing good risk management practices. When there are outliers impacting the entire pool by not doing their part to reduce losses and their contributions are not meaningful enough to cover the cost of those losses, over time, it becomes an unequitable situation for the rest of the members picking up the cost. Ms. Cusimano also reminded the Committee the intention has never been to punish members because they had a bad loss or a bad year, necessarily. However, this conversation is being brought forth due to two members with ongoing adverse loss experience.

Ms. Cusimano further reported there are other pools that use surcharges instead of ex-mods to determine contributions and reminded the Committee that in the Pooled Property and Auto Physical Damage programs, a surcharge is being used to determine contributions, not an ex-mod. She probed the Committee as to their interest in potentially utilizing surcharges to increase contributions in the General Liability (GL) and Workers' Compensation (WC) programs to those members with a significant adverse deviation in loss experience from the rest of the pool.

A point was raised regarding inverse condemnation (IC) claims and how BCJPIA members initially were not aware of how much exposure existed until it was time to start paying for these types of claims many years ago. In response, BCJPIA implemented a cost sharing

provision in its coverage documents in which 50% of the cost beyond the member's self-insured retention of IC claims would be the responsibility of the member if it was found the agency had some fault in the outcome. It was also mentioned that some members can implement all the correct risk control measures to avoid IC claims and still be hit with multiple expensive claims in one year and it is out of the agency's control. After further discussion, the Committee directed staff to bring the conversation surrounding IC claims and BCJPIA's handling of these to a future meeting for further discussion along with some alternative options for covering them, such as commercial insurance.

Upon discussing options to implement surcharges, the Committee reiterated the reason this conversation was taking place was due to the two members' (Sausalito and Monte Sereno) loss experience with the pool over the years. So, staff was directed to not continue analyzing this matter. The Committee agreed to further discuss the two members separately at a special meeting in September.

C. Discussion Regarding the Use of Actual Payroll vs. Estimated Payroll for the Budget

Ms. Cusimano reminded the Committee that estimated payroll is being used to determine annual contributions each year. During renewal season in the spring, members are tasked with providing their estimated payroll for the following year. The reason BCJPIA started using estimated payroll is because this would capture members expected new exposures or changes in operations for the next program year. Invoices are sent out after July 1 based on the estimated payroll then at least 18 months from that program year, staff conducts a true-up process to capture any inaccuracies in payroll reporting. This results in some members receiving a refund because of overreported payroll or an invoice if payroll was underreported.

Ms. Cusimano stated estimating payroll for the following year is a challenging process that leaves members tasked with guessing a future year's operations. If the guess is far off from what actually happens that year, it impacts all member contributions with some receiving an invoice they were not expecting 18 months later and creating budgeting issues at their agencies. For this reason, many other pools have moved away from utilizing estimated payroll and instead have shifted over to using actual payroll for the budget.

As such, staff proposed utilizing actual calendar year payroll going forward. It was noted contribution amounts would not change or be impacted. This would simply eliminate the need to conduct a true-up calculation 18 months later, and members would be invoiced for the exact amount that their contribution should be for the year.

Lastly, Ms. Cusimano added that making this change would require changes to governing documents. The Committee directed staff to move forward with this process and make the changes to governing documents as needed and bring to a future meeting for formal approval.

9. LIABILITY PROGRAM MATTERS

A. Proposed Changes to BCJPIA Pooled Liability Program Memorandum of Coverage (MOC) for 2023/24

Ms. Cusimano reminded the Committee about the changes made to the 2023/24 GL MOC at the special meeting in June as well as the direction given to staff to bring back proposed changes to the definition of “damages” in relation to land use regulation and planning within the MOC. Additionally, she reminded the Committee it has been previously suggested that BCJPIA should outline certain conditions in the MOC that members would need to meet in order to obtain coverage for sexual abuse and molestation (SAM) claims.

Mr. Will Portello, BCJPIA Litigation Manager, and Ms. Kellie Murphy, BCJPIA Legal Counsel, provided an overview of the changes previously made to the current MOC stating the changes were made to reinforce the Board’s intent so to avoid future misunderstandings as to what is or is not covered.

Ms. Murphy reviewed a new definition in the MOC for “land use regulation or planning” stating it is intended to clarify and implement the Board’s intention that coverage is not extended under the MOC for claims arising from a member’s land use regulation or planning, regardless of the theory of recovery, and that such claims are excluded separate and apart from IC claims. She reminded the Committee of the lengthy discussion that took place at the special Board meeting in June surround this language.

Another lengthy discussion ensued regarding the definition of damages in relation to land use and regulation planning in which specific concerns were raised about how a potential misinterpretation of the exclusion could result in covered claims being excluded. For example, there could be a situation where there is a claim that appears to be a land use claim but is really brought about because of the conduct and enforcement of that regulation, not the regulation itself.

Ultimately, the Committee agreed they were comfortable with the language added to the definition of “land use regulation and planning” as written and just wanted it to be clear in the meeting minutes that these types of claims are not to be covered. Staff was also directed to educate the rest of the membership as to the intent of this language.

Further, Ms. Cusimano reminded the Committee that currently, BCJPIA does not exclude SAM claims and probed the Committee as to its desire to implement conditions that must be met by members to obtain this coverage in the future.

A discussion ensued and the Committee agreed that there are certain policies and procedures that every agency could be following that would reduce the incidence of SAM claims. Overall, the Committee agreed they would like to continue covering SAM claims as finding coverage outside of BCJPIA proved to be very challenging. As such, staff was directed to bring back options for conducting yearly audits of SAM policies and procedures that members have in place as well as sample policies and procedures that members should follow to continue receiving SAM coverage.

Lastly, Ms. Murphy noted that within the MOC, there is language outlining the appeal process. However, there should be a timeline stated in the MOC that states how much time a member has to request arbitration from BCJPIA or provide notice of intent to file declaratory relief after the Board makes a decision on an appeal. She stated typically that timeline provides members 90 days after the Board makes its decision, but informed the Committee it can decide on a different timeline. The Committee directed staff to add the 90-day timeline back into the MOC.

The Committee recessed for a break from 11:07 a.m. to 11:16 a.m.

B. CARMA Aggregate Limits for Inverse Condemnation

Mr. Portello reported that the storms that took place over the winter in late 2022, early 2023, resulted in localized flooding that has impacted two BCJPIA members so far. IC claims have been submitted by the two agencies that largely revolve around issues of rainfall flooding private residences and businesses due to allegations of improper maintenance. For one member, claims total \$685,000 and for the second member, claims received are now in excess of \$4.6 million.

Mr. Portello advised these claims pose an issue with respect to excess coverage provided by the California Affiliated Risk Management Authorities (CARMA) in that the aggregate amount available through CARMA is less than the amount of the claims received to date. CARMA has a \$2 million per occurrence sublimit subject to a \$4 million aggregate for the entire pool. When staff initially reached out to CARMA regarding their handling of IC claims that reach the limits, CARMA responded that they follow suit with whatever the underlying pool decides to do and typically, they pay out on a first come first served basis until the limits are exhausted. Mr. Portello further stated IC claims tend to have a long tail and there is a three-year statute that applies, which creates further complications for BCJPIA in handling IC claims.

With respect to the 2022/23 program year, staff sought the Committee's feedback for resolving these claims as well as how future claims should be resolved. Courses of action presented by staff were as follows:

- Option 1: paying out claims on a first come, first served basis until funds are exhausted.
- Option 2: paying out claims on a pro-rata based upon total IC claims filed for the program year after the three-year statute expires. For example, member A had \$5 million in claims and member B had \$2.5 million in claims, the available \$4 million would be shared at a 2:1 ratio between the two members.
- Option 3: paying out claims on an equal share distribution in which funds would be provided equally amongst the members with claims regardless of the severity of each member's claims. For example, member A had a \$5 million claim and member B had \$2.5 million, the available \$4 million would be shared 50/50 with each member receiving \$2 million.

Upon discussing various courses of options, the Committee directed staff to:

- Reach out to BCJPIA's Broker, Alliant, to discuss commercial insurance options available for covering this exposure and bring to the October Board meeting for consideration.
- Draft a policy that outlines the equal share distribution, option 3. Further, the policy should provide two language options: one that outlines how BCJPIA will provide members with a "loan" to cover their IC claims after a certain period of time has passed and that also provides for BCJPIA to reassess after the statute expires; and the second option to include language stating members are responsible for payment of IC claims until the statute has passed and staff can then distribute the available funds to those impacted in a given year.
- Reach out to CARMA to gauge its Board's desire to potentially provide more coverage for IC claims.

10. CLOSED SESSION

Pursuant to Government Code section 54956.95(a), the Committee convened to closed session at 11:40 a.m. to discuss:

Liability Claims

- Frankel v. Central Marin Fire Authority
- Rose v. City of Larkspur
- Loveland Commons LLC v. City of Mill Valley
- Bowers v. City of Pleasanton
- Holloway v. City of Pleasanton
- Tashima v. City of Pleasanton
- Kucharewski v. City of Pleasanton
- Gilliland v. City of Pleasanton
- Denend v. City of Redwood City
- Delfs and Lu v. City of Redwood City
- Selner v. City of Redwood City
- Villa Montgomery Apartments v. City of Redwood City
- Portje v. City of Sausalito

Workers' Compensation Claims

- Cron v. City of Fairfax
- Saenz v. City of Sausalito

REPORT FROM CLOSED SESSION

The Board reconvened into open session at 12:08 p.m. Ms. Kellie Murphy, BCJPIA Legal Counsel, advised there were no actions to report.

11. EXECUTIVE DIRECTORS REPORT

A. Report by Executive Director

Ms. Cusimano provided a brief recap of the actions taken during the meeting and what items will be brought to the Special Executive Committee meeting in September for further discussion and consideration.

12. CLOSING COMMENTS

A. Executive Committee

None.

B. Staff

None.

13. ADJOURNMENT

The August 17, 2023, Executive Committee meeting adjourned by consensus of the Committee members at 12:12 p.m.

John Burdette

John Burdette, Interim Board Secretary

BCJPIA Lag Report
01/01/23 - 06/30/23

MEMBER	AVERAGE DAYS TO REPORT 01/01/23 - 03/31/23	AVERAGE DAYS TO REPORT 01/01/23 - 06/30/23	IMPROVEMENT OVER LAST QUARTER	# OF CLAIMS REPORTED 01/01/23 - 06/30/23	# OF CLAIMS OUT OF COMPLIANCE	IN COMPLIANCE
Albany	N/A	15	N/A	2	2	No
Brisbane	0.5	1.6	No	4	0	Yes
Central Marin Fire	6.5	5.8	Yes	8	4	No
Central Marin PA	2.38	3	No	5	1	Yes
Corte Madera	N/A	N/A	N/A	N/A	N/A	N/A
Emeryville	2.75	4.5	No	9	1	Yes
Fairfax	N/A	6	N/A	1	1	No
Larkspur	N/A	N/A	N/A	N/A	N/A	N/A
Menlo Park	5.91	4.4	Yes	18	4	Yes
Mill Valley	3.4	2.8	Yes	18	2	Yes
Novato	2.8	4.5	No	12	3	Yes
Piedmont	1.67	1.66	Yes	6	0	Yes
San Anselmo	N/A	6	N/A	1	1	No
Sausalito	26	26	N/A	1	1	No
Tiburon	12.75	10.6	Yes	5	2	No
Union City	8.9	8.1	Yes	18	9	No
	6.7	7.1	Totals	108	31	

7.1 Days Average - All Reporting Members.

71% of claims reported timely for 01/01/23 - 03/31/23

50% of all reporting members are in compliance

Agenda Item 6.A.

MEMBERSHIP MATTERS

SUBJECT: Discussion Regarding City of Sausalito and City of Monte Sereno
Prepared and Presented by Jaesa Cusimano, BCJPIA Executive Director

BACKGROUND AND STATUS:

At the August 17, 2023, Executive Committee meeting, the Committee reviewed loss ratios and frequency and severity ratios for all members in accordance with Resolution 02 2022/23. Within the Pooled Liability Program, two members, City of Sausalito and City of Monte Sereno, fell significantly above the average in their overall loss ratio over a five-year period. Upon discussion, the Committee did not feel as though the underlying issues within these two agencies could be solved by participating in the Member Assistance Program. The Committee directed staff to provide additional information regarding each member, such as detailed loss information and meeting participation.

City of Sausalito

The City of Sausalito has been a member of BCJPIA since 1996. Over the last five years, staff has observed the following:

- A significant increase in overall loss ratio, loss frequency, and loss severity in the Liability program;
- A decrease in participation/attendance at BCJPIA Board meetings; and
- An overall decrease in communication and responsiveness to BCJPIA staff inquiries.

Loss Analysis:

Over the last ten years, the City has incurred \$13.1M in losses in the liability program due to 36 claims. The total incurred over the City's self-insured retention (SIR) is \$11.2 million. The City has maintained a \$50,000 SIR over the ten years. Staff has prepared a ten-year history of loss ratios, frequency, and severity by program years. The majority of the City's losses were incurred in the most recent five program years.

Board Meeting Participation:

The Board has met 45 times over the last five program years. The City has had a representative attend 26 of the 45 meetings. Of note, the City has had a representative in attendance for the last five meetings, after having no representation at the preceding seven meetings.

Communication/Data Collection:

Over the last two years, staff has experienced significant delays in obtaining critical information from the City, such as renewal information, payroll, and applications. Additionally, BCJPIA's Legal Counsel, Kellie Murphy, has experienced delayed communication regarding claims and coverage opinions. These delays have caused hours of additional staff time and thousands of dollars in fees for Ms. Murphy's time.

**Agenda Item 6.A.
Page 2**

City of Monte Sereno

The City of Monte Sereno was one of BCJPIA's founding members in 1986. Over the last three years, staff has observed the following:

- A single high severity claim in the liability program in the 2018/19 program year; and
- A decrease in Board meeting participation/attendance; and

Loss Analysis:

The City of Monte Sereno is the smallest member of the BCJPIA Liability Program, with an annual payroll of approximately \$1M. For reference, the next largest member is the City of Larkspur, with approximately \$4M in payroll. The City's contributions for the liability program for the 2023/24 program year totaled \$108,469 (.4% of the total liability program contributions). The City has maintained a \$5,000 SIR and required that the minimum premium of \$30,000 be applied up until the 2021/22 program year. The established minimum premium has not been adjusted since it was established in the Liability Master Program Document in 2016. While outside the ten-year loss analysis conducted, of note, the City also had a claim in 2003/04, with a total incurred of \$1,669,068. The City also participates in the BCJPIA Property Program and a few ancillary programs.

Board Meeting Participation:

The City has not had a representative at a BCJPIA Board meeting since November 2019, when the City appointed their new City Manager as the Board Representative.

RECOMMENDATION:

None.

REFERENCE MATERIALS ATTACHED:

- Ten-Year Loss Analysis
- BCJPIA Liability MPD
- BCJPIA Bylaws
- Summary of Closed Claims

BCIPIA
10 Year Loss Ratio for Net Incurred Loss* by Sausalito and Monte Sereno ~ Liability Program
 Data as of June 30, 2023

Loss Ratio Ranked by Highest Loss Ratio to Lowest

Member	2018/19					2019/20					2020/21					2021/22					2022/23					5 year			
	Claim Count	Frequency %	Severity %	Loss Ratio	Incurred Loss*	Claim Count	Frequency %	Severity %	Loss Ratio	Incurred Loss*	Claim Count	Frequency %	Severity %	Loss Ratio	Incurred Loss*	Claim Count	Frequency %	Severity %	Loss Ratio	Incurred Loss*	Claim Count	Frequency %	Severity %	Loss Ratio	Incurred Loss*	Total Incurred Loss	Frequency %	Severity %	Loss Ratio
		4.06%	202.75%	>90%			1.23%	5.32%	>90%			0.89%	8.17%	>90%			3.13%	4.72%	>90%			1.67%	14.74%	>90%					
Sausalito	19	2.95%	100.23%	5257.88%	6,450,006	8	1.23%	5.32%	249.78%	345,602	5	0.89%	8.17%	275.65%	460,800	22	3.13%	4.72%	155.34%	332,451	12	1.67%	14.74%	495.29%	1,060,000	8,648,859	3.43%	80.13%	1286.79%
Monte Sereno	1	1.10%	102.52%	2671.10%	928,038	-	0.00%	0.00%	0.00%	-	-	0.00%	0.00%	0.00%	-	-	0.00%	0.00%	0.00%	-	-	0.00%	0.00%	0.00%	-	928,038	0.22%	20.50%	534.22%
TOTAL	20				7,378,044	8				345,602	5				460,800	22				332,451	12				1,060,000	9,576,896			19.73%

Member	2013/14					Incurred Loss*	2014/15					Incurred Loss*	2015/16					Incurred Loss*	2016/17					Incurred Loss*	2017/18					Incurred Loss*	5 year			
	Claim Count	Frequency %	Severity %	Loss Ratio	Claim Count		Frequency %	Severity %	Loss Ratio	Claim Count	Frequency %		Severity %	Loss Ratio	Claim Count	Frequency %	Severity %		Loss Ratio	Claim Count	Frequency %	Severity %	Loss Ratio		Claim Count	Frequency %	Severity %	Loss Ratio	Total Incurred Loss		Frequency %	Severity %	Loss Ratio	
	n/a		n/a		n/a		n/a		n/a		n/a		n/a		n/a		n/a		n/a		n/a		n/a											
Sausalito	4	0.75%	0.00%	0.00%	-	12	2.26%	0.00%	0.00%	-	11	1.97%	7.80%	380.90%	435,516	13	2.22%	6.53%	312.18%	382,964	12	1.93%	30.70%	1379.63%	1,908,882	2,727,363	2.99%	83.63%	414.54%					
Monte Sereno	-	0.00%	0.00%	0.00%	-	1	1.35%	0.00%	0.00%	-	-	0.00%	0.00%	0.00%	-	-	0.00%	0.00%	0.00%	-	-	0.00%	0.00%	0.00%	-	-	0.27%	0.00%	0.00%					
TOTAL	4				0	13				0	11			435,516	13				382,964	12				1,908,882	2,727,363			#DIV/0!						

* net of Member SIR

BAY CITIES JOINT POWERS INSURANCE AUTHORITY

MASTER PROGRAM DOCUMENT
FOR THE
POOLED LIABILITY PROGRAM

Amended February 16, 2023

BAY CITIES JOINT POWERS INSURANCE AUTHORITY

MASTER PROGRAM DOCUMENT
FOR THE
POOLED LIABILITY PROGRAM

TABLE OF CONTENTS

ARTICLE I: DEFINITIONS.....	3
ARTICLE II: GENERAL.....	3
ARTICLE I: DEFINITIONS.....	3
ARTICLE II: GENERAL.....	4
A. AUTHORITY.....	4
B. PURPOSE.....	4
C. PARTICIPATION.....	4
D. GOVERNANCE.....	4
E. GOALS AND OBJECTIVES.....	4
ARTICLE III: PROGRAM ELEMENTS.....	5
A. PROGRAM YEARS.....	5
B. RETAINED LIMITS.....	5
C. DEPOSIT PREMIUMS.....	6
E. DIVIDEND AND ASSESSMENTS.....	7
F. EXCESS COVERAGE.....	8
G. PAY-AS-YOU-GO RESERVE FUND FOR PAYMENT OF CLAIMS.....	8
A. BOARD.....	9
B. EXECUTIVE COMMITTEE.....	9
C. EXECUTIVE DIRECTOR.....	10
D. DUTIES OF THE LITIGATION MANAGER.....	10
ARTICLE V: CLAIMS ADMINISTRATION.....	12
A. CLAIMS PROCEDURES MANUAL.....	12
B. CLAIMS AUDIT.....	12
C. CLAIM SETTLEMENT AUTHORITY.....	12
D. DISPUTES REGARDING MANAGEMENT OF A CLAIM.....	13
ARTICLE VI: PARTICIPATION.....	13
A. ELIGIBILITY AND APPLICATION.....	13
B. PARTICIPANTS' DUTIES.....	14
C. TERMINATION.....	14
ARTICLE VII: TERMINATION AND DISSOLUTION OF THE PLP.....	16
ARTICLE VIII: AMENDMENTS.....	16

BAY CITIES JOINT POWERS INSURANCE AUTHORITY

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

ARTICLE I: DEFINITIONS

The following definitions apply to this MPD:

1. **Executive Director** 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 Bay Cities Joint Powers Insurance Authority.
3. **Board** shall mean the Board of Directors of the Bay Cities Joint Powers Insurance Authority.
4. **Deposit Premium** shall mean that amount to be paid by each **Participant** for each **program year** as determined by the **Board** in accordance with Article III, Section C of this MPD.
5. **Joint Powers Agreement** shall mean the agreement made by and among the public entities listed in Appendix A (**Member Entities**) of the **Joint Powers Agreement**, hereafter referred to as **Agreement**.
6. **Loss Experience** shall mean incurred losses 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 each of the entities identified in the Pooled Liability Program Memorandum of Coverage, Endorsement 2.
9. **Program Year** shall mean that period of time commencing at 12:01 a.m. Pacific Time on July 1 and ending at 12:01 a.m. Pacific Time on the following July 1.
10. **Retained Limit** shall mean the amount stated on the applicable Declarations or certificate of coverage, which will be paid by the **Participant** before the **Authority** is obligated to make any payment from the pooled funds.

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

ARTICLE II: GENERAL

A. AUTHORITY

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

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.

E. GOALS AND OBJECTIVES

1. The PLP shall provide liability coverage for the **Participants** utilizing an optimum mix of risk retention and risk transfer. The PLP shall provide various **retained limits** for the **Participants**, provide a risk-sharing pool for losses above individual

retained limits up to the **Authority's Self-Insured Retention (SIR)**, and obtain excess coverage for the amount of the loss which exceeds the **Authority's SIR**. Additionally, the PLP shall provide for the sharing of operating costs and payment of the excess coverage by charging all **Participants** their share of such costs.

2. Although the PLP is provided to the **Participants** under those terms and conditions which prevail at the time the **Participant** joins the PLP, the **Board** shall have the right to alter, from time to time, the terms and conditions of the excess coverage and the pooled underlying coverage in response to the needs and abilities of the PLP and the **Participants**, as well as in response to availability of coverage from outside sources.
3. The **Authority** offers participation in a risk-sharing pool, covering losses of **Participants** in accordance with the MOC adopted by the **Participants**. The assets of the pooled program shall be maintained at all times as the assets of the **Participants** collectively. The assets may be disbursed only pursuant to the provisions of this MPD, and no **Participant** shall have an individual right to exercise control over said assets.
4. The PLP will provide coverage under the terms and conditions set forth in the MOC. The amount of coverage to be pooled and/or purchased is at the discretion of the **Board**.

ARTICLE III: PROGRAM ELEMENTS

A. PROGRAM YEARS

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

B. RETAINED LIMITS

1. The PLP shall annually establish the **limit of coverage** for the pool. The underlying coverage of the PLP shall offer **Participants retained limits** of \$5,000, \$10,000, \$25,000, \$50,000, \$100,000, \$250,000, \$350,000, and \$500,000 per occurrence, or other limits as modified by resolution. The **Participants** may annually select their **retained limits**. 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 alter its **retained limit** only at the inception of a **program year** upon thirty (30) days' advance written notice. The **Board**, with a two-thirds vote, and by providing 60 days' advance written notice to the **Participant**, may require a **Participant** at the inception of the **program year** to take a **retained limit** different than the **Participant's retained limit** in the expiring **program year**.
3. The amount of each loss, including expenses, which is less than the **retained limit** chosen by the applicable **Participant** shall be paid by the **Participant**. Those amounts of each loss that are less than the **retained limit** chosen by the applicable **Participant** may be paid on behalf of the **Participant**, from the pay-as-you-go reserve fund. If a **Participant** directly pays any claim within its **retained limit**, such **Participant** shall report all payments to the **Authority** to ensure better claims control and actuarial analysis.

C. DEPOSIT PREMIUMS

1. The **Executive Director**, in conjunction with an actuary, shall establish rates and **deposit premiums**, subject to **Board** approval, adequate to fund the actuarially determined losses in the pooled layer of the PLP, including attorney fees and other claims related costs, the cost of excess coverage, and the projected administrative costs, including retirement of debt, if any, of the PLP.
2. The annual **deposit premium** for each **Participant** shall be calculated by applying the **Participant's** estimated annual payroll to 1) the funding level as determined by the actuary and recommended by the **Executive Director**, adjusted for individual **Participant's loss experience**, relative risk and **Participant retained limit** and/or the cost of any purchased primary insurance or reinsurance, 2) the cost of any excess coverage, and 3) a charge for the administrative and claims servicing expenses of the PLP as determined by the **Executive Director**. After the end of the **program year**, adjustments from estimated to actual payroll shall 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: Sixty percent of the amount calculated is allocated by each **Participant's** relative percentage of payroll; forty percent of the amount calculated is allocated equally to each **Participant**.
4. There shall be a minimum pooled-layer premium of \$30,000 for each **Participant**. Any **Participant's** experience modified pooled layer premium that does not equal or exceed \$30,000 will automatically be inflated to \$30,000 prior to the costs of excess coverage and administrative and claims servicing expenses being applied.

D. EXPERIENCE MODIFICATION

1. Each **Participant** shall be evaluated each year for an experience modification adjustment that shall be applied to the **deposit premium**.
2. The calculation of the adjustment shall include the **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 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.

E. DIVIDEND AND ASSESSMENTS

1. DIVIDENDS

- (a). At the end of each **program 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 at a discounted 90% confidence level. The calculated amount shall represent the maximum dividend available to be declared.
 - iii. The dividend shall be reduced if any of the five succeeding years (after the five years eligible for dividend calculation) have negative equity, with liabilities actuarially stated at a discounted 90% confidence level.
 - iv. Dividends may be declared only if the equity at the 90% confidence level is five times the **Self Insured Retention**.

2. ASSESSMENTS

- (a). Assessments may be levied on the **Participants** for the risk sharing layer of any **program year(s)**, as approved by the **Board**, at such time as an actuary finds that the assets of the PLP, as a whole, do not meet the expected

discounted losses of the PLP. Each **Participant's** share of the assessment shall be allocated based upon the **deposit premiums** collected for the self-insured layer of each respective **program year** being assessed. If such assessment is not sufficient to relieve the pool of its actuarially determined deficit in the year of the assessment, such assessment shall be levied each subsequent year until the actuarially determined deficit is relieved. The timing of payment shall be determined by the **Board** at the time of assessment.

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

F. EXCESS COVERAGE

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

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

1. ESTABLISHMENT OF FUND

- (a). At the beginning of the **program year**, each **Participant** shall be charged a deposit which shall be equal to the expected cost of each Participant's claims within the individual **Participant's retained limit** for a period of three months. Should the deposit calculation be less than \$5,000, the Participant's deposit will automatically be increased to that amount as a required minimum contribution. Contributions will also be rounded to the nearest \$5,000.

- (b). The monies collected from the above deposits shall establish a fund for payment of claims within the individual **Participant's retained limit**. This fund shall be referenced as the pay-as-you-go reserve fund.

2. ACCOUNTING AND REPLENISHMENT OF FUND

- (a). There shall be a separate accounting of the deposits for each **Participant**. These monies, although invested with the rest of the **Authority's** funds, shall not be allocated investment earnings and shall remain in the control of the **Authority**. Every four years, through the budget process, the amount to be held by the **Authority** on behalf of each **Participant** may be adjusted.
- (b). Payments from the fund shall be initiated by sending a check requisition form to the **Third Party Administrator**. Upon receipt, the **Third Party Administrator** shall execute payment and charge the payment to the requesting **Participant's** account.
- (c). Each month, a register of payments made on behalf of each **Participant** shall be sent to the **Participant** for whom payments were made from the fund. Accompanying the register will be an invoice for the amounts needed to replenish the fund to its original amount. The **Participants** shall have forty-five (45) days from the date of said invoice to make repayments to the fund.

ARTICLE IV: ADMINISTRATION

A. BOARD

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

B. EXECUTIVE COMMITTEE

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

C. EXECUTIVE DIRECTOR

The **Executive Director** 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 liability, claims that are the subject of the PLP including those in litigation and shall have the authority to settle any claim as set forth herein, subject to the provisions of Article V.C.;
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 **Executive Director** 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** involved but only if the ultimate value of the claim is less than \$500,000.

3. The Executive Committee shall have the authority to settle any claim with an ultimate net loss equal to or less than five hundred thousand dollars (\$500,000). However, such authority shall only apply to those claims whose ultimate net loss, as defined in the PLP MOC, is in excess of the settlement authority given to the Litigation Manager and above the **retained limit** of the **Participant** involved.
4. The **Board** retains unto itself the authority to approve settlement of all other claims. However, the Executive Committee shall periodically review such claims and may make recommendations to the Board.

D. DISPUTES REGARDING MANAGEMENT OF A CLAIM

1. Any matter in dispute between a **Participant** and the **Third Party Administrator** shall be called to the attention of the **Executive Director** and heard by the Executive Committee whose decision may be appealed to the **Board** within thirty (30) days of the Committee's decision. If no appeal is filed, the decision of the Executive Committee shall be final.
2. When an appeal has been filed, the **Board** shall meet within thirty (30) days to hear the appeal. The decision of the **Board** will be final.
3. Where the Litigation Manager has the right to, and does, select legal counsel, the **Participant** for which such counsel was selected may appeal the selection to the Executive Committee. The decision of the Executive Committee shall be binding and final with no further right of appeal to the **Board**.

ARTICLE VI: PARTICIPATION

A. ELIGIBILITY AND APPLICATION

1. ELIGIBILITY

- (a). The 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 enter the PLP only at the commencement of a new **program year**. If an applicant chooses to enter the PLP at any other time, the **deposit premium** for the remainder of the **program year** will be pro-rated. The new **Participant** will begin coverage on the date that is mutually acceptable to the new **Participant** and the **Board**; however, the new **Participant** will be required to share losses with the other **Participants** of the PLP for the entire **program year**.

2. APPROVAL OF APPLICATION

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

B. PARTICIPANTS' DUTIES

1. The **Participants** shall provide payroll, using the State DE-6 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 Executive Director**, Litigation Manager, **Third Party Administrator**, and loss control personnel, in regards to underwriting activities of the **Authority**.
4. Each year the **Authority** shall bill **Participants** for a liability **deposit premium** for the next **program year**. The billings shall be due and payable in accordance with the Bylaws.
5. Billings may be made to **Participants** for a **program year** found to be actuarially unsound. All billings for payments to bring a **program year** into an actuarially sound condition are due and payable upon receipt.
6. Former **Participants** in the PLP shall be required to pay all applicable billings for the **program years** in which they participated. Delinquent billings, together with penalties and interest, shall be charged and collected from the **Participant** in accordance with the Bylaws.
7. Penalties and interest shall be charged against any amounts delinquent in accordance with the Bylaws.

C. TERMINATION

1. VOLUNTARY TERMINATION

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

2. INVOLUNTARY TERMINATION

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

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 30 days prior to the effective date of termination.

3. CONTINUED LIABILITY UPON TERMINATION

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

ARTICLE VII: TERMINATION AND DISSOLUTION OF THE PLP

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

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

ARTICLE VIII: AMENDMENTS

This MPD may be amended by a majority 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**.

**BAY CITIES JOINT POWERS
INSURANCE AUTHORITY**

BYLAWS

As Amended July 1, 2022

**BYLAWS
of the
BAY CITIES JOINT POWERS
INSURANCE AUTHORITY**

TABLE OF CONTENTS

ARTICLE I - PREAMBLE.....	4
ARTICLE II - PURPOSES	4
ARTICLE III - GOVERNING DOCUMENTS	5
ARTICLE IV - MEMBER ENTITIES	5
Section 1 - Members	5
Section 2 - Membership Classes	6
Section 3 - Approval of Membership.....	6
ARTICLE V - GOVERNING BOARD.....	6
Section 1 - Board of Directors	6
Section 2 - Meetings of the Board	8
Section 3 - Voting	8
ARTICLE VI - OFFICERS OF THE AUTHORITY.....	9
Section 1 - Officers	9
Section 2 - Eligibility for President, Vice President, and Treasurer/Auditor.....	10
Section 3 - Terms of Office	10
Section 4 - Election of President, Vice President, and Treasurer/Auditor	10
Section 5 - Duties.....	11
ARTICLE VII - COMMITTEES.....	10
Section 1 - Executive Committee	10
Section 2 - Nominating Committee	12
ARTICLE VIII - FINANCIAL AUDIT	12
Section 1 - Audit Required	12
Section 2 - Filing an Audit.....	12
Section 3 - Costs of Audit.....	12
ARTICLE IX - FISCAL YEAR	12
ARTICLE X - BUDGET	13

ARTICLE XI - ESTABLISHMENT AND ADMINISTRATION OF FUNDS	13
ARTICLE XII - ADMINISTRATION	13
Section 1 - Administrative Officer.....	13
Section 2 - Responsibilities.....	13
Section 3 - Compensation and Employment.....	14
ARTICLE XIII - RISK POOLING PROGRAMS	15
Section 1 - Formation of Risk Pooling Programs	15
Section 2 - Administration.....	15
Section 3 - Late Fees.....	15
Section 4 - Actuarial Soundness of Programs.....	16
Section 5 - Withdrawal or Expulsion.....	16
Section 6 - Deposit and Investment of Authority Funds.....	16
Section 7 - Accounting Method for Pooled Programs	16
ARTICLE XIV - DEFAULTS AND EXPULSION FROM THE AUTHORITY	17
Section 1 - Events or Conditions of Default Defined	17
Section 2 - Remedies on Default	17
Section 3 - Agreement to Pay Attorney's Fees and Expenses.....	18
Section 4 - No Additional Waiver Implied by One Waiver.....	18
ARTICLE XV – DISPUTES OR CLAIMS BETWEEN MEMBER ENTITIES.....	19
ARTICLE XVI - NON-CLAIMS DISPUTES BETWEEN MEMBER AND JPA.....	19
ARTICLE XVII - TORT LIABILITY AND INDEMNIFICATION	19
ARTICLE XVIII - LEGAL REPRESENTATION.....	19
ARTICLE XIX - EXECUTION OF CONTRACTS.....	19
ARTICLE XX - COMPENSATION FOR DIRECTORS AND OFFICERS	20
Section 1 - Reimbursed Expenses.....	20
Section 2 - Directors and Officers Insurance	20
ARTICLE XXI - TERMINATION AND DISTRIBUTION	20
ARTICLE - XXII NOTICES	20
Section 1 - Notices to Member Entities	21
Section 2 - Notices to and Claims Against the Authority	21
ARTICLE XXIII - EFFECTIVE DATE AND SUPREMACY.....	21

BYLAWS
of the
BAY CITIES JOINT POWERS
INSURANCE AUTHORITY
(As Revised July 1, 2022)

ARTICLE I - PREAMBLE

The Bay Cities Joint Powers Insurance Authority (Authority) is established for the purpose of operating and maintaining a cooperative program of self-insurance, jointly purchased insurance, risk management, and to provide a forum for the discussion, study, development, and implementation of procedures of mutual benefit in risk sharing and risk management programs.

ARTICLE II - PURPOSES

The purpose of the Authority is to achieve jointly the following objectives for the benefit of the Authority's Members in all types of risks covered by the Authority:

- A. Reduce the costs of commercial insurance coverage through effective loss control practices and combined purchasing power;
- B. Reduce the cost of all administrative services through central management, volume, and combined purchasing power;
- C. Provide greater stability of commercial insurance market purchases through size of combined membership, longer duration of commercial insurance agreements, and effective loss control practices;
- D. Reduce severity and frequency of Member losses;
- E. Improve recovery from responsible third party tort-feasors;
- F. Establish reserve funds for easing the financial impact of large losses on the Members;
- G. Increase awareness of hazards causing losses and provide guidance in the alleviation of such hazards;
- H. Provide for payment of claims and benefits as authorized by the Authority's Members;
- I. Jointly purchase reinsurance or excess commercial insurance;

- J. Jointly purchase administrative and other services including risk management, consulting, brokerage, claims administration, claims adjusting, safety and loss prevention, data processing, legal, and related services; and
- K. Acquire, hold, and dispose of property, real and personal, necessary or desirable for the purpose of providing the Members of the Authority with a complete self-insurance and risk management program, including, but not limited to, the acquisition of necessary facilities and equipment, the employment of personnel, and the operation and maintenance of a system of risk management.

ARTICLE III- GOVERNING DOCUMENTS

The Governing Documents of the Authority shall be the Joint Powers Agreement, these Bylaws, the Master Program Document (MPD) for each program, and the Memorandum of Coverage (MOC) for each program.

ARTICLE IV- MEMBER ENTITIES

Section 1 - Members

Any party to the Agreement is a Member Entity (Member). Any governmental agency which is authorized to participate in a joint powers agreement under the Government Code and is located within 250 miles of the City of Emeryville, California, may become a Member of the Authority by agreeing to be bound by the Governing Documents and by complying with all of the following requirements:

- A. Submit a completed application for membership 90 days before the start of the program year. The application must be accompanied by the Board of Directors' approved fee, which shall be returned if membership is approved;
- B. Submit a signed resolution acknowledging participation under the terms and conditions which then prevail;
- C. Execute the Joint Powers Agreement then in effect and agree to be bound by any subsequent amendments to this Agreement;
- D. Agree to be a Member for at least three consecutive fiscal years after commencement of membership;
- E. Be accepted for membership by a two-thirds vote of the Board of Directors;
- F. Appoint, in writing, a Director and one Alternate Director to the Board; and
- G. Ensure the Director and Alternate Director file with the Executive Director the required Fair Political Practices Commission (FPPC) forms upon assuming office, annually, and upon termination of office.

Section 2 - Membership Classes

There shall be two classes of membership defined as follows:

- A. Class A Members shall be those designated as such on the signature page of the Agreement. Class A Members must participate in either the Liability Program and/or the Worker's Compensation Program.
- B. Class B Members shall be those designated as such on the signature page of the Agreement. A Class B Member which participates in the Liability or Workers' Compensation Programs may, at its request, and upon the approval of the Board, become a Class A Member and hold a seat on the Board of Directors and be entitled to one vote on all matters before the Board. Class B Members shall be entitled to one advisory vote on matters solely concerning the programs in which they participate.

Section 3 - Approval of Membership

The Executive Director shall inspect each applicant, including its most recent audited financial statement and associated management letters, and may schedule and coordinate a safety inspection of the facilities of the applicant. The Executive Director shall report the results of these inspections to the Executive Committee who shall provide a recommendation to the Board of Directors. A two-thirds vote of the Board of Directors is required to approve the application, based upon the Executive Committee's recommendation, the application, and any inspections, reports, or other material pertinent to the decision.

ARTICLE V - GOVERNING BOARD

Section 1 - Board of Directors

- A. The governing body of the Authority shall be the Board of Directors (Board). The Board shall be comprised of one Director, and one Alternate Director, from each Class A Member. Each Director has one vote. The Alternate Director may cast a vote only in the absence of the Director. Each Director and Alternate Director shall hold one of the following positions, or its equivalent: City Attorney, Assistant City Attorney, Financial Officer, City Administrator/Manager, Assistant/Deputy City Administrator/Manager, Risk Manager, Human Resources Manager, or Administrative Services Director. Directors or Alternate Directors not holding one of these positions shall be a person within the agency with significant risk management duties and/or oversight of a significant portion of the entity's risk management functions.

The Alternate Director shall be appointed by, and serve at the pleasure of, that Member Entity's Director. Each Director or Alternate Director, when voting on Authority business, shall have the authority to bind his or her Member Entity to the action taken by the Board.

A Member Entity may change any of its representatives to the Board only by written notification to the Authority from the Member's governing body or the Member's Chief Executive Officer.

- B. The Board shall provide policy direction for the Executive Director, the Executive Committee, and any other standing committees. The Board may delegate any or all of its responsibilities, except those requiring a vote by the Board as specified in the Governing Documents.
- C. The Board reserves unto itself the authority to do the following (except where specifically noted, a simple majority of the Board present at a meeting may take action):
 - 1. Accept a new Member to the Authority (two-thirds vote of the Board);
 - 2. Accept indebtedness (two-thirds vote of the Board);
 - 3. Adopt a budget;
 - 4. Amend these Bylaws (two-thirds vote of the Board);
 - 5. Alter a Member's retained limit (two-thirds vote of the Board);
 - 6. Approve or terminate contracts for JPA administrative services and legal counsel (two-thirds vote of the Board);
 - 7. Approve MPDs;
 - 8. Approve MOCs;
 - 9. Approve the retained limits established by the Executive Director to be offered with each program year;
 - 10. Approve distributions and assessments to Members of a program year;
 - 11. Create an office;
 - 12. Establish, amend, or terminate a program (two-thirds vote of those Board members in the specific program);
 - 13. Elect and remove Officers of the Authority and remove an Officer from office;
 - 14. Expel a Member from the Authority (two-thirds vote of the Board);
 - 15. Approve withdrawal notice or the rescission thereof by a Member;

16. Settle claims in excess of the authority of the Executive Committee;
17. Terminate or suspend a Member's rights in a program where the Member is in default (two-thirds vote of the Board);
18. Acquire and dispose of real property;
19. Approve dissolution of Authority (two-thirds vote of the entire Board); and
20. Approve financing costs from one program to another (program to program borrowing) when financing extends beyond a twelve-month period (majority vote of the Board).

Section 2 - Meetings of the Board

- A. The Board will meet at least two times a year to review the operations of the Authority. The Board will establish a time and place to hold such regular meetings. The Board Secretary, or other designated Officer, will provide notice of all Board meetings to each Member Entity, keep minutes of the meetings, and send copies of such minutes to the Members.
- B. A special meeting may be called by the president or by one-third of the Board with twenty-four (24) hours notice, stating the purpose, date, time, and place of the meeting, provided such notice is in writing.
- C. Every Member Entity is expected to attend Board meetings.
- D. All meetings of the Board shall be conducted in accordance with the Ralph M. Brown Act (Government Code §54950 et seq.)

Section 3 - Voting

- A. All matters within the purview of the Board may be decided by a majority vote of a quorum of the Board, except as specified otherwise in the Governing Documents.
- B. Each Class A Member shall be entitled to one vote on the Board which vote shall not be weighted.
- C. Each Class B Member shall be entitled to one advisory vote on matters solely concerning the program(s) in which it participates. An advisory vote is defined as a vote representing that Member's opinion, but is not binding on the Board.

ARTICLE VI- OFFICERS OF THE AUTHORITY

Section 1 - Officers

The Officers of the Authority shall consist of a President, a Vice President, a Treasurer/Auditor, and an Executive Director. The Board shall elect from its membership the President, Vice President, and the Treasurer/Auditor and appoint the Executive Director and Secretary.

Section 2 - Eligibility for President, Vice President, and Treasurer/Auditor

Only Directors to the Board shall be eligible to serve as President, Vice President, or Treasurer/Auditor.

Section 3 - Terms of Office

- A. The terms of office for the President, Vice President, and Treasurer/Auditor shall be two years, commencing with the start of the fiscal year in each of the even calendar years.
- B. The term of all other offices is continuous until the Board elects to change Officers or to eliminate the office.

Section 4 - Election of President, Vice President, and Treasurer/Auditor

- A. A nominating committee shall be appointed by the President as set forth in ARTICLE VII, Section 4.
- B. The committee's nomination of candidates for the offices of President, Vice President, and Treasurer/Auditor shall be made in writing to the Executive Director no later than ten (10) days prior to the last regular Board meeting of the fiscal year. The slate of nominees will be sent to each member at least seven (7) days before the last regular Board meeting of the fiscal year. Additional candidates for any of the three offices may be made by an open nomination and second from the floor at the time of the meeting, provided the candidate(s) meet the requirements set forth in Section 2 above.
- C. The election of Officers will be held at the last regular Board meeting of the fiscal year in which the terms of the President, Vice President, and Treasurer/Auditor expire. Those candidates receiving a majority of votes in each office will succeed to those offices. If no nominee receives a majority vote, the nominee with the least votes shall be deleted as a nominee and a new vote taken. This elimination process will continue until one nominee receives a majority vote. Each Director or, in the absence of that Director, his/her Alternate Director, shall be eligible to vote.
- D. The President, Vice President, and Treasurer/Auditor will serve for their elected terms of office until the end of those terms, or termination of employment with his or her Member Entity, or until removal from office by a majority vote of the Board, whichever is earliest.

- E. The Board shall make the appointment to a vacancy in the office of the President. Vacancies in any other office shall be filled by appointments by the President with the approval of the Board at the next regularly scheduled Board meeting held after the vacancy occurs.

Section 5 - Duties

- A. President - The President shall preside at all meetings of the Authority. The President shall appoint the Directors to each joint powers authority of which the Authority is a Member and shall make all Committee appointments, with the exception of the Executive Committee, which may be formed as necessary or appropriate for carrying on the activities of the Authority. The President shall execute documents on behalf of the Authority as authorized by the Board and shall serve as the primary liaison between the Authority and any other organization. The President shall serve as ex-officio member of all Committees.
- B. Vice President - The Vice President shall serve as ex-officio member of all Committees when the President is unable to attend. In the absence, or temporary incapacity, of the President, the Vice President shall exercise the functions covered in Section A above.
- C. Executive Director - The duties and responsibilities of the Executive Director shall be as set forth in ARTICLE XII of these Bylaws and as set forth in the contract between the Executive Director and the Authority.
- D. Board Secretary - The Secretary shall be responsible for preparing all minutes and agendas of the Board, the Executive Committee, and any other Committee meetings, preparing necessary correspondence, and maintaining files and records.
- E. Treasurer/Auditor - The Treasurer/Auditor shall have the responsibility to disburse Authority funds, accounts, and property, in accordance with the California Government Code and at the direction of the Board and/or Executive Committee. The Treasurer/Auditor shall be responsible for supervision of the maintenance of such records to assure that financial accounts, records, funds, and property are maintained in accordance with accepted accounting practices and procedures prescribed by the Government Accounting Standards Board. The Treasurer/Auditor shall make available for inspection all financial records.

ARTICLE VII - COMMITTEES

Section 1 – Executive Committee

- A. Members

There shall be an Executive Committee, pursuant to Article X of the Joint Powers Agreement. The members shall be: 1) the President, Vice President, and Treasurer/Auditor; and 2) four other Directors. One of the non-Officer Directors shall be

elected by the Board in the same manner and at the same time as the elected Officers, and shall serve a two-year term commensurate with the terms of the Officers. The other three (3) non-Officer Directors shall be elected in the same manner as the Officers, except that their two-year terms shall commence on July 1 of each alternate year. The Executive Committee shall include a member of the Workers' Compensation Program. All members of the Executive Committee must be Class A Members.

B. Meetings

The Executive Committee will meet two times a year or as otherwise deemed necessary by the Authority. Such meetings will be duly noticed and an agenda will be distributed to the Board. The Board Secretary, or other designated Officer, will keep minutes of the meetings and send copies of such minutes to all Board members.

All meetings of the Executive Committee shall be conducted in accordance with the Ralph M. Brown Act (Government Code § 54950, et seq.)

C. Duties

The Executive Committee shall have the same authority as that of the Board except for those authorities specifically reserved unto the Board in Article V, Section 1, C.

D. Appeal Process

Any action taken by the Executive Committee may be appealed to the Board by filing a written appeal with the Executive Director within fourteen (14) days following the date the minutes are sent as provided in Part B of this section. Upon receipt of such appeal, the Executive Director shall stay the action and place the appeal on the agenda of the next regularly scheduled Board meeting. The decision of the Board shall be final.

E. Removal and Vacancies

The Board of Directors may remove any or all Members from the Executive Committee at any time.

A vacancy on the Executive Committee shall be filled by election of the Board. Pending action by the Board, the remaining members of the Executive Committee may fill a vacancy on an interim basis, except in the case of a vacancy caused by removal, which may only be filled by the Board.

Continued membership of any Executive Committee member who misses more than 50% of the meetings in any calendar year or who misses two consecutive meetings shall be reviewed by the Executive Committee with any removal recommendations to be made to the Board of Directors.

Section 2 - Nominating Committee

A. Members

The President shall appoint a Nominating Committee for the annual election to the Executive Committee, the biennial election of Officers, and any appointments or transitions to other Committees, as necessary. The Nominating Committee shall be at least two (2) but not more than five (5) Directors.

B. Duties

The nomination of candidates for the Officers shall be made in writing to the Authority no later than ten (10) days prior to the last regular Board meeting of the fiscal year. The slate of nominees will be sent to each member at least seven (7) days before the last regular Board meeting of the fiscal year. Additional candidate(s) may be nominated at the time of the meeting, provided the candidate(s) meet the requirements set forth in Article VI, section 2. Recommendations for appointments to other Committees can be sent in writing in advance of a regular meeting, or verbally at a regular meeting.

ARTICLE VIII– FINANCIAL AUDIT

Section 1 - Audit Required

The Board shall direct an annual audit of the financial accounts and records of the Authority to be made by a qualified, independent individual or firm. The minimum requirements of the audit shall be those prescribed by State law.

Section 2 - Filing an Audit

The financial audit report shall be filed with the State Controller's Office within six months of the end of the fiscal year under examination. A copy of the audit report shall be filed as a public record with each Member Entity.

Section 3 - Costs of Audit

The costs of the audit shall be charged against the operating funds of the Authority.

ARTICLE IX - FISCAL YEAR

The fiscal year of the Authority shall be the period from July 1 of each year through June 30 of the subsequent year.

ARTICLE X - BUDGET

The Executive Director shall present a draft budget to the Board at the last scheduled Board meeting prior to July 1 of the next fiscal year, and the Board shall adopt the annual budget by July 1 of each year.

ARTICLE XI - ESTABLISHMENT AND ADMINISTRATION OF FUNDS

The Authority is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It shall comply with every provision of law relating to the subject, particularly Section 6505 of the California Government Code.

The funds received for each program shall be accounted for separately on a full-accrual basis. Each Member's annual deposit premium shall be billed annually or biannually, as identified by the Member. The Member electing to pay biannually shall pay an administrative fee in the amount of \$100 with the second installment in addition to interest levied on the unpaid balance of the Member's total deposit premium based on the prevailing interest rate earned through the Local Agency Investment Fund (LAIF) plus an additional 1%. The portion of each program premium allocated for payment of claims and losses shall be held by the Authority in trust for the program members. There shall be a separate trust for each program. The Treasurer/Auditor shall receive, invest, and disburse funds only in accordance with procedures established by the Board and in conformity with applicable law.

ARTICLE XII –ADMINISTRATION

Section 1 - Administrative Officer

The Board shall appoint the Authority's Executive Director. The Executive Director shall be responsible for the daily administration, management, and operation of the Authority's programs and shall be subject to the direction and control of the Board and the Executive Committee. The Executive Director may be an employee of the Authority.

Section 2 - Responsibilities

The responsibilities of the Executive Director include, among others, the following:

- A. Monitor the status of the Authority's programs and operations, Member losses, program's administrative and operational costs, and service companies' performance;
- B. Provide appropriate risk management consulting and information to Members and the Board which may include implementing, coordinating, and supervising the Authority's programs of safety and risk control;
- C. Prepare periodic risk management advisories to all Members reporting new trends in the insurance field, matters of interest regarding new legislation, Authority loss experience,

desirable corrective actions, and other information pertinent to risk management programs being handled by the Authority;

- D. Prepare an annual budget;
- E. Advise State legislators on Authority needs and advise Members on legislative developments;
- F. Advise Members of the risk impact of any proposed new programs or changes to existing programs;
- G. Assist the Executive Committee and/or Board in selecting brokers, auditors, insurance companies, Board counsel, and claims administration services;
- H. Perform or contract for financial and claims audits, and actuarial studies to determine cost allocations;
- I. Advise Members on selection of defense attorneys;
- J. Develop criteria to assist Members in preparation of risk management plans;
- K. Conduct risk management audits to review the participation of each Member in the programs and submit an audit report to the governing body of the audited Member within a reasonable time after such audit;
- L. Develop effective risk management and loss control procedures and advise Members regarding implementation;
- M. Prepare the Authority's financial statements, receive budgeted revenues, and pay budgeted expenses;
- N. Select and supervise Authority employees as authorized by the Board; and
- O. Design and implement new Authority programs of risk management and self-insurance as directed by the Board.

The Executive Director 's responsibility to each Member to perform any or all of the above services is limited to those programs in which the Member is participating.

Section 3 - Compensation and Employment

The Authority shall compensate the Executive Director for services rendered to the Authority in such amount and manner as may be adopted by the Board. Details regarding compensation, termination, and other employment related matters pertaining to the Executive Director shall be governed by such terms and conditions established by the Board.

The Authority may elect to contract for risk management, financial and administrative services. The contracted administrator shall conduct the day-to-day management, operation, general administration, and financial affairs of the Authority and its programs of insurance, self-insurance, and risk management, and provide oversight of all other contracted operations of the Authority pursuant to the Agreement, these By-Laws, and any Policies and Procedures established by the Board of Directors.

ARTICLE XIII - RISK POOLING PROGRAMS

Section 1 - Formation of Risk Pooling Programs

- A. The Authority shall establish, by a two-thirds vote of the Board, risk pooling programs in such areas as the Board may select including, but not limited to, the areas of property, workers' compensation, and liability coverage.
- B. The Authority may authorize and use administrative funds to study the feasibility and development of new pooling programs.

If a new program is approved by the Board, the estimated premium contributions shall be developed by the Executive Director and presented in writing to each Member. Each Member shall have sixty (60) days from the date of such notice to state in writing its intent to join or refrain from joining the new program. Unless the Member provides written notice to the Executive Director of its intent to participate in the new program, it shall be presumed that the Member declines to participate in the program. Upon conclusion of the notice period, the final premium contributions will be determined and billed to the Members in the new program. Each Member that elected to participate will be bound to the new program for the period of time required by the MPD of that program.

- C. The Board will adopt and maintain an MPD, establish the coverage to be offered by the program, and determine the financial contributions to be required of the Members in the new program.

Section 2 - Administration

- A. Each risk pooling program will be self-contained and individually evaluated for administrative and equity allocation purposes. Each program year within each program shall be separately accounted and maintained. Program funds may be co-mingled with the funds of another program for durations shorter than a twelve-month period, or when specifically allowed by the Board as referenced in Article V, Section 1.C, #20.
 - 1. The Board shall annually select an actuary to determine the adequacy of program(s) reserves, funding rates, and evaluate the programs of self-insurance; and upon receipt of the actuarial study, the Board shall review the actuarial study and: a) provide recommendations and/or request further analysis, if necessary; and b) approve the recommended funding rates for the next fiscal year, based upon the results of the study and approve the actuarial studies for placement as

permanent record for BCJPIA. The costs of such actuarial studies shall be charged against the operating funds of BCJPIA.

2. At least once every two years, the adequacy of claims adjusting for the Members shall be examined by an independent auditor contracted directly by BCJPIA or an affiliated party such as the Excess Carrier, who specializes in claims auditing. The claims audit reports shall address the issues of both adequacy of claims procedures and accuracy of claims data. The report shall be filed and made available to each Member. The costs of such claims audits shall be charged against the operating funds of BCJPIA.
- B. Each Member shall cooperate fully with the Executive Director or designated agent to provide underwriting and safety and loss control information. Additionally, each Member shall comply with the provisions of the annual Safety and Loss Prevention Program Plan as approved by the Board. Each Member will provide underwriting information per the terms of the respective program's Master Program Document. This information will include but is not limited to individual Member exposures, historic loss information, and safety and risk control practices specific to each program.

Section 3- Late Fees

Members with delinquent amounts due shall be assessed a penalty which shall be one (1) percent of the unpaid amount due and payable to the Authority thirty (30) days after the initial invoice due date. An additional penalty of another one (1) percent shall accrue after an additional forty-five (45) days. Interest shall accrue on all delinquent amounts due and payable to the Authority at the rate of 10% per annum from the due date of the billing until the date finally posted by the designated financial institution. Each Member shall indemnify the Authority from any expense resulting from its failure to pay the sum due on or before the due date. The Board may elect to temporarily suspend coverage for a Member which fails to pay its contribution. For the purpose of assessing penalties and interest, each part of a calendar month shall be treated as a whole month. Total penalties and interest on each invoice for a sum of less than fifty dollars will be waived.

Section 4 - Actuarial Soundness of Programs

All coverage programs shall be actuarially sound at all times. The condition of each program shall be evaluated by an independent actuary on an annual basis. The condition of each open program year within each such program shall be evaluated to determine its actuarial soundness. If it is determined by the Actuary that any year is no longer actuarially sound, the appropriate actions, as described in the MPDs, shall be taken. In addition, the Board reserves the right to assess all Member Entities and/or the Members of any program an amount determined by the Board to be necessary for the soundness of the program and to allocate such assessment in a fair and equitable manner.

Section 5 – Withdrawal or Expulsion

- A. The withdrawal or expulsion of a Member from any pooled program shall be in accordance with the provisions of the MPD governing that program.
- B. The withdrawal or expulsion of any Member from any pooling program shall not terminate its responsibility to contribute its share of premiums, or funds, to any fund or program in which it participated, nor its responsibility to provide requested data for the periods in which it participated. All current and past Members shall be responsible for their respective share of the expenses, as determined by the Executive Director, until all claims, or other unpaid liabilities covering the period of the Member's participation in the risk pooling program, have been finally resolved and a determination of the final amount of payments due by, or credit to, the Member for the period of its participation has been made by the Board. All past Members shall receive any distribution of dividends based on the same methodology of the current Members. The withdrawal or expulsion of any Member from any program shall not require the re-payment or return to that Member of all or any part of any contributions, payments, advances, or distributions except in conformance with the provisions as set forth herein and in the MPD.

Section 6 - Deposit and Investment of Authority Funds

The Treasurer/Auditor may deposit and invest Authority funds, subject to the same requirements and restrictions that apply to deposit and investment of the general funds of a city incorporated in the State of California and in accordance with the Investment Policy adopted annually by the Board.

Section 7 - Accounting Method for Pooled Programs

The accounting method for each pooled program will be in accordance with the provisions of the MPD governing that program and the principles established by the Government Accounting Standards Board.

ARTICLE XIV - DEFAULTS AND EXPULSION FROM THE AUTHORITY

Section 1 - Events or Conditions of Default Defined

The following shall be "defaults" under the Agreement and these Bylaws:

- A. Failure by a Member to observe and/or perform any covenant, condition, or agreement under the Governing Documents, including but not limited to risk management or loss reporting procedures;
- B. Consistent failure to attend meetings, submit requested documents, or cooperate in the fulfillment of the program objectives;

- C. Failure to pay any amounts, including penalties and interest, due to the Authority for more than thirty (30) days;
- D. Excessive losses as determined by the Board;
- E. The filing of a petition applicable to the Member in any proceedings instituted under the provisions of the Federal Bankruptcy Code or under any similar act which may hereafter be enacted; or
- F. Any condition of the Member which the Board believes jeopardizes the financial viability of the Authority.

Section 2 - Remedies on Default

- A. Whenever any default referred to in Section 1 of this article has occurred, the Authority may exercise any and all remedies available pursuant to law or granted pursuant to the Agreement and these Bylaws including, but not limited to increasing a Member's retention, penalty, or assessment, canceling a Member's coverage, or expelling the Member. However, no remedy shall be sought for defaults, except defaults under Paragraphs 4 and 5 in Section 1 of this Article, until the Member has been given thirty (30) days notice of default by the Board.
- B. Expulsion of a Member from the Authority:
 - 1. The Board, with at least a two-thirds (2/3) vote, may expel any Member that is in default, as defined in Section 1 of this Article, from the Authority.
 - 2. Such expulsion shall be effective on the date prescribed by the Board, but not earlier than thirty (30) days after notice of expulsion has been personally served or sent by certified mail to the Member.
 - 3. The expulsion of any Member from any pooling program, after the effective date of such pooling program, shall not terminate its responsibility to contribute its share of premiums, or funds, to any fund program in which it participated, nor its responsibility to provide requested data for the period(s) in which it participated. All current and past Members shall be responsible for their respective shares of the expenses, as determined by the Executive Director, until all claims, or other unpaid liabilities, covering the period of the Member's participation in the risk pooling program have been finally resolved and a determination of the final amount of payments owed by, or credit to, the Member for the period of its participation has been made by the Board.
- C. Cancellation of Coverage under a Program:

1. Upon the occurrence of any default, the Board may temporarily cancel all rights of the defaulting Member in any program in which such Member is in default until such time as the condition causing default is corrected.
 2. Upon the occurrence of any default, the Board, with at least a two-thirds (2/3) vote, may cancel permanently all rights of the defaulting Member in any program in which such Member is in default.
- D. No remedy contained herein is intended to be exclusive. No delay, or failure to exercise any right or power accruing upon any default, shall impair any such right or shall be construed to be a waiver thereof.

Section 3 - Agreement to Pay Attorney's Fees and Expenses

In the event either the Authority or a Member is in breach of any provision of any of the Governing Documents and the other party employs attorneys or incurs other expenses for the collection of moneys or the enforcement of performance of any obligation under the Governing Documents and prevails on its claim against the other party, the non-prevailing party shall pay to the prevailing party the reasonable fees of such attorneys and such other costs and expenses incurred by the other party.

Section 4 - No Additional Waiver Implied by One Waiver

In the event any provision in any of the Governing Documents is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE XV - DISPUTES OR CLAIMS BETWEEN MEMBER ENTITIES

After being notified in writing that one Member has filed a formal claim, which is potentially covered by a program of the Authority, against another Member, in accordance with provisions of the California Government Code, the Authority will no longer act on behalf of either Member with respect to such claim without written consent from the Members involved.

ARTICLE XVI - NON-CLAIMS DISPUTES BETWEEN MEMBER AND JPA

Any dispute arising out of any action taken or decision made under the Bay Cities Joint Powers Insurance Authority administration and/or operations shall be resolved as set forth in this Appeal Process. Any such dispute may be appealed by a participating Member to the Executive Committee and upon receipt of such appeal, the Pool Administrator shall stay the action or decision and place the appeal on the agenda of the next regularly scheduled Executive Committee meeting. The Executive Committee's decision may be subsequently appealed to the Board of Directors. The decision of the Board of Directors shall be final and binding on the parties to the dispute.

The Member requesting the appeal shall have a representative present at the Executive Committee, and Board if applicable, meeting to discuss the request with the Committee and/or Board of Directors, or the appeal will be automatically denied.

ARTICLE XVII - TORT LIABILITY AND INDEMNIFICATION

Each Member, pursuant to Sections 895.4 and 895.6 of the California Government Code, shall indemnify each of the other Members for any loss. Therefore, each of the Members herein, pursuant to the provisions of Sections 895.4 and 895.6 of the California Government Code, agrees to indemnify each of the other Members for any loss, cost, or expense that may be imposed upon such Member solely by reason of Section 895.2 of the California Government Code.

ARTICLE XVIII - LEGAL REPRESENTATION

Legal counsel, to advise on matters relating to the operation of the Authority, may be recommended by the Executive Director and approved by the Board. The Authority shall have the right to pay such legal counsel reasonable compensation for said services.

ARTICLE XIX - EXECUTION OF CONTRACTS

The Board or Executive Committee may authorize the Executive Director, any Officer or Officers, or any agent or agents, to enter into any contract or execute any instrument in the name, and on behalf, of the Authority and such authorization may be general or confined to specific instances. Unless so authorized by the Board, no Officer, agent, or employee shall have any power or authority to bind the Authority by any contract or to pledge its credit or to render it liable for any purpose or to any amount.

ARTICLE XX - COMPENSATION FOR DIRECTORS AND OFFICERS

Section 1 - Reimbursed Expenses

The Authority shall reimburse any Director or Officer, who does not otherwise receive compensation for actual expenses incurred, for reasonable out of pocket expenses of the Director or Officer in the performance of his/her duty on behalf of the Authority.

Section 2 - Directors and Officers Insurance

The Authority may purchase insurance indemnifying the Directors, Officers, and Administrative staff for personal liabilities arising out of wrongful acts in the discharge of their duties to the Authority or may elect to self-insure such risk.

ARTICLE XXI – TERMINATION AND DISTRIBUTION

The Agreement and the Authority shall continue to exist after termination for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to conclude the obligations and affairs of the Authority.

Upon termination of the Agreement, the assets of the Authority shall be distributed and apportioned, as provided by the MPDs, among the Members, including those Members which previously withdrew or were expelled. Any additional funds received after the above distributions are made shall be returned in proportion to the contributions made.

ARTICLE XXII - NOTICES

Section 1 - Notices to Member Entities

Any notice to be given to any Member, in connection with these Bylaws, must be in writing (which may include facsimile) and will be deemed to have been given when deposited in the mail to the address specified by the Member to receive such notice. Any notice delivered by facsimile will be deemed to have been given when the facsimile transmission is complete. Any Member may, at any time, change the address to which such notice will be given by giving five (5) days written notice to the Authority.

Section 2 – Notices to and Claims Against the Authority

Any notice to or claim against the Authority shall be mailed or delivered to the mailing address of the Authority.

ARTICLE XXIII- EFFECTIVE DATE AND SUPREMACY

These Bylaws shall be effective immediately upon the date of adoption and upon adoption shall supersede and cancel any prior Bylaws and/or amendments thereto.

However, the adoption of these Bylaws shall not affect the Agreement or any amendments thereto. Any provision in these Bylaws which is inconsistent with the Agreement shall be superseded by the Agreement but only to the extent of the inconsistency.

These Bylaws may be amended from time to time as provided in Article V, section 1.C. #4, provided that at least thirty (30) days written notice has been given to each Member.

BAY CITIES JOINT POWERS INSURANCE AUTHORITY

BYLAWS

AS AMENDED

Location_Name	Claimant_Last_Name	Type_Description	Date of Loss	Statu	Total_Incurrec	SIR	OVER SIR
CITY OF SAUSALITO-510	Miller	<Not Assigned>	09/21/2012	C	65,421.88	50,000.00	15,421.88
CITY OF SAUSALITO-510	Phyllis Schrobsdorff & Nguey Lay	Sewer	11/23/2015	C	165,953.50	50,000.00	115,953.50
CITY OF SAUSALITO-510	Rose	Slip & Fall	12/23/2012	C	53,629.78	50,000.00	3,629.78
CITY OF SAUSALITO-510	Astle Samas	Slip & Fall	01/04/2016	C	384,540.88	50,000.00	334,540.88
CITY OF SAUSALITO-510	Watson, Ann	Sewer	01/01/2004	C	108,520.88	50,000.00	58,520.88
CITY OF SAUSALITO-510	Ford	Sewer	11/23/2015	C	185,021.72	50,000.00	135,021.72
CITY OF SAUSALITO-510	Andelin	Sewer	03/08/2019	C	84,479.11	50,000.00	34,479.11
CITY OF SAUSALITO-510	Federal Insurance Company	Tree Caused Damage	01/21/2019	C	53,512.20	50,000.00	3,512.20
CITY OF SAUSALITO-510	Keegin Harrison LLP Client Trust Account	Tree Caused Damage	01/21/2019	C	50,939.00	50,000.00	939.00
CITY OF SAUSALITO-510	Berscheler Associates, P.C. in trust for Gollub	General Liability	01/13/2018	C	255,989.09	50,000.00	205,989.09
CITY OF SAUSALITO-510	Gilg	Water/Damage/Flood	02/07/2017	C	106,208.45	50,000.00	56,208.45
CITY OF SAUSALITO-510	Phillips,Erlewine, Given & Carlin, LLP Client Trust Act	Slip & Fall	09/11/2019	C	251,571.16	50,000.00	201,571.16
CITY OF SAUSALITO-510	Lydia McNair, Ind. & Trustee of Lydia McNair U/T/A	Landslide	02/14/2019	C	600,000.00	50,000.00	550,000.00
CITY OF SAUSALITO-510	Gordon	Landslide	02/14/2019	C	2,500,000.00	50,000.00	2,450,000.00
CITY OF SAUSALITO-510	Titus	Landslide	02/14/2019	C	1,350,000.00	50,000.00	1,300,000.00
CITY OF SAUSALITO-510	Winston Ashmeade & David P. Johnson	Landslide	02/14/2019	C	1,500,000.00	50,000.00	1,450,000.00
CITY OF SAUSALITO-510	Sausallito Slides	Landslide	02/14/2019	C	671,596.74	50,000.00	621,596.74
CITY OF SAUSALITO-510	Leitch	Landslide	02/14/2019	C	67,779.73	50,000.00	17,779.73
CITY OF SAUSALITO-510	Ismail	Slip & Fall	07/09/2017	C	231,099.68	50,000.00	181,099.68
CITY OF MONTE SERENO-	Khanna	Hit From Rear	10/16/2014	C	28,121.65	5,000.00	23,121.65
CITY OF MONTE SERENO-	Shevertalova	Slip & Fall	08/02/2018	C	933,037.82	5,000.00	928,037.82

SEPTEMBER 28, 2023

Agenda Item 8.A.

ADMINISTRATIVE MATTERS

**SUBJECT: Direction from Executive Committee regarding the City of Sausalito and
 City of Monte Sereno
 Prepared and Presented by Jaesa Cusimano, BCJPIA Executive Director**

BACKGROUND AND STATUS:

This time is reserved for the Executive Committee to provide direction to staff regarding the City of Sausalito and City of Monte Sereno.

RECOMMENDATION:

Staff is seeking direction from the Executive Committee.

REFERENCE MATERIALS ATTACHED:

None.

SEPTEMBER 28, 2023

Agenda Item 8.B.

ADMINISTRATIVE MATTERS

SUBJECT: BCJPIA Excess General Liability Coverage for 2024/25
Prepared and Presented by Jaesa Cusimano, BCJPIA Executive Director

BACKGROUND AND STATUS:

At the August meeting, the Executive Committee directed staff to evaluate options for excess general liability coverage due to there being limited coverage for inverse condemnation claims through BCJPIA's current excess coverage provider, the California Risk Management Authorities (CARMA).

In preparation for future discussion with the Board in October, staff invited Conor Boughey, Alliant, to participate in this meeting to review available excess general liability coverage options for BCJPIA.

RECOMMENDATION:

Staff is seeking direction from the Executive Committee.

REFERENCE MATERIALS ATTACHED:

None.

SEPTEMBER 28, 2023

Agenda Item 8.C.

ADMINISTRATIVE MATTERS

**SUBJECT: Review of Draft Resolution Outlining Allocation of CARMA Sub and Aggregate Limits for Inverse Condemnation Claims Incurred During the 2022/23 Program Year
Prepared and Presented by Jaesa Cusimano, BCJPIA Executive Director**

BACKGROUND AND STATUS:

BCJPIA's excess liability pool, the California Affiliated Risk Management Authority (CARMA), provides limited coverage for inverse condemnation (IC) claims. Specifically, in the 2022/23 program year, the CARMA Memorandum of Coverage outlined the following exclusion and coverage limits:

9. Claims arising out of:

(a) Land use regulations or planning policies, annexation, eminent domain by whatever name called, no matter how or under what theory such claims are alleged.

Notwithstanding this exclusion, coverage under this Memorandum is provided, in excess of the \$1,000,000 Covered Parties Retained Limit first paid, for Damages and Defense Costs of up to \$2,000,000 per Occurrence and subject to an aggregate limit of \$4,000,000 per Member for inverse condemnation claims due to 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.

At the time of the posting of this agenda, staff is aware of two members with IC claims, resulting from a storm in the 2022/23 program year. The Executive Committee discussed at its August 17, 2023, meeting, how to handle the CARMA aggregate limit if the total of the claims exceed the CARMA aggregate limit provided. The Executive Committee gave direction to draft a policy that outlined an equal share to impacted members and consideration was given to the timeline of the payout. Upon further discussion with Board Counsel, it was determined that attempting to draft a blanket policy that would cover this scenario as well as all future scenarios would be challenging due to the specifics of each claim and various nuanced differences claim to claim.

Therefore, staff is proposing that this specific situation in 2022/23 be resolved via a Board approved resolution. The attached draft resolution outlines a proposed resolution for the 2022/23 CARMA aggregate limit for IC claims. The resolution incorporates the following:

- Equal sharing in the CARMA Inverse Condemnation aggregate limit between the two impacted members;
- If one member does not exhaust their share, the excess would be allocated to the other members' claim so long as the occurrence does not exceed the CARMA sub-limit of \$2M per occurrence; and
- Inclusion of agreement that should any additional occurrences/claims arise, affected members may be subject to an assessment to re-allocate the limits equally.

RECOMMENDATION:

Staff recommends the Executive Committee recommend approval to the Board of draft Resolution 01-2023/24 Outlining Allocation of CARMA Sub and Aggregate Limits for Inverse Condemnation Claims Incurred During the 2022/23 Program Year.

REFERENCE MATERIALS ATTACHED:

- Draft Resolution 01-2023/24 Outlining Allocation of CARMA Sub and Aggregate Limits for Inverse Condemnation Claims Incurred During the 2022/23 Program Year

RESOLUTION NO. 01 2023-2024

**RESOLUTION OF THE BOARD OF DIRECTORS
OF THE BAY CITIES JOINT POWERS INSURANCE AUTHORITY
OUTLINING ALLOCATION OF CARMA SUB AND AGGREGATE LIMITS
FOR INVERSE CONDEMNATION CLAIMS INCURRED DURING THE 2022/23
PROGRAM YEAR**

WHEREAS, BCJPIA participated in the California Affiliated Risk Management Authority (CARMA) for excess liability coverage in the 2022/23 program year; and

WHEREAS, the 2022/23 CARMA Memorandum of Coverage contains a per occurrence and pool aggregate limit for claims arising out of Inverse Condemnation; and

WHEREAS, BCJPIA anticipates exceeding the applicable sub-limit per occurrence and pool aggregate limit in the 2022/23 program year based on claims received to date; and

WHEREAS, it is in the best interest of the impacted members to equitably allocate the available coverage.

NOW, THEREFORE, IT IS RESOLVED, THAT the available coverage in the 2022/23 program year shall be allocated as follows:

For claims implicating the CARMA \$4,000,000 aggregate Inverse Condemnation sublimit applicable to BCJPIA for the 2022-2023 Program Year, each individual BCJPIA member with such a claim shall be entitled to an equal share of coverage proceeds, however no single occurrence may exceed coverage in excess of the CARMA \$2,000,000 per-occurrence inverse condemnation sublimit. In the event a BCJPIA member's claims do not exhaust its respective share of the \$4,000,000 aggregate limit, available funds in excess of that member's share may be applied to one or more claims of other members, not to exceed the per-occurrence limit for any claim to which the funds are applied.

Payments made from CARMA funds on Inverse Condemnation claims for the 2022-2023 Program Year are to be considered loans to the member utilizing the funds for settlement and the member may be assessed for an ultimate allocation of previously-paid funds at the closure of all Inverse Condemnation claims for the 2022-2023 Program Year, or the expiration of the applicable statute of limitations for all Inverse Condemnation claims for the 2022-2023 Program Year, whichever is later, to account for subsequently received claims.

This Resolution was adopted by the Board of Directors at a regular meeting of the Board held on the 27th day of October 2022, in Napa, California by the following vote:

AYES	_____
NOES	_____
ABSENT	_____
ABSTAIN	_____

PRESIDENT, BOARD OF DIRECTORS

ATTEST:

EXECUTIVE DIRECTOR

SEPTEMBER 28, 2023

Agenda Item 8.D.

ADMINISTRATIVE MATTERS

**SUBJECT: Proposed Changes to the Workers' Compensation Memorandum of Coverage
Prepared and Presented by Jaesa Cusimano, BCJPIA Executive Director**

BACKGROUND AND STATUS:

At the June Board meetings, staff reported that BCJPIA's excess workers' compensation coverage providers, the Local Agency Workers' Compensation Joint Powers Authority (LAWCX) and Public Risk Innovation, Solutions, and Management (PRISM), could potentially be making changes to the definition of an occurrence within their coverage documents, and that staff would make those changes to BCJPIA's Memorandum of Coverage (MOC) and bring to a future Board meeting for approval.

PRISM and LAWCX have since provided an endorsement to their MOCs that changes the definition of an occurrence, and BCJPIA's MOC will need to be updated to incorporate the changes. However, the PRISM/LAWCX language has created uncertainty as to its application, so staff will be discussing the changes with PRISM staff on September 26th and will provide the Executive Committee an overview of the recommended changes at the meeting.

Based on direction received from the Committee at the meeting, the redlined MOC will be included in the October 27th Board meeting agenda for review and approval.

RECOMMENDATION:

Staff will make a recommendation at the meeting.

REFERENCE MATERIALS ATTACHED:

- LAWCX Endorsement to 2023/24 MOC Changing Definition of Occurrence



ENDORSEMENT NO. 1
LOCAL AGENCY WORKERS' COMPENSATION EXCESS JOINT POWERS AUTHORITY
(LAWCX)
OCCURRENCE DEFINITION AMENDATORY ENDORSEMENT

It is understood and agreed that the PART ONE – DEFINITIONS section of the Memorandum of Coverage is amended as follows:

Section K. Occurrence is hereby deleted and replaced by the following:

K. Occurrence: (A) All bodily injury sustained by one (1) or more employees involving one (1) or more Covered Parties, from any one (1) disaster, accident or event, or any series of disasters, accidents, or events, and is traceable to the same single disaster, accident or event, or series of disasters accidents or events, shall be deemed to arise from a single occurrence; however, any one (1) occurrence shall be limited to no more than seven (7) calendar days such that each individual employee claimant's date of injury must fall within the seven (7) calendar day period. LAWCX will defer to LAWCX's excess carrier, Public Risk Innovations, Solutions, and Management (PRISM) as to the date when any such seven (7) calendar day period begins, provided that it is not earlier than the date and time of the first recorded employee claimant's date of injury, and provided that no two (2) periods overlap. Should this Memorandum expire or terminate while an occurrence covered hereunder is in progress, LAWCX will be responsible for its portion of loss arising from such occurrence under this Memorandum through the conclusion of the seven (7) calendar day period, even if such period extends beyond the term of this Memorandum, subject to the terms and conditions hereof, provided that no amount of loss for the same occurrence shall be claimed against any renewal or replacement of this Memorandum. (B) Occupational disease and communicable disease sustained by each employee shall be deemed to arise from a separate occurrence, and the occurrence shall be deemed to take place on the last day of the last exposure, in the employment of the Covered Party, to conditions causing or aggravating the disease OR the date upon which the employee first suffered disability and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his or her employment with the Covered Party, whichever comes first.

It is further agreed that nothing herein shall act to increase LAWCX's limit of indemnity.

This endorsement is part of the Memorandum of Coverage and takes effect on the effective date of the Memorandum of Coverage unless another effective date is shown below. All other terms and conditions remain unchanged.

Effective Date: July 1, 2023

Memorandum No.: LAWCX 23.24

Issued to: All Members

Issue Date: July 18, 2023

Authorized Representative
LAWCX, Executive Director