CITY OF SALINAS
FINANCE COMMITTEE

DATE: **NOVEMBER 5, 2018**

DEPARTMENT: **CITY ATTORNEY'S OFFICE**

FROM: **RHONDA COMBS, ASSISTANT CITY ATTORNEY**

TITLE: **CONSIDER AND RECOMMEND CITY CONTRACT TO JOIN AUTHORITY OF CALIFORNIA CITIES EXCESS LIABILITY, A RISK-SHARING POOL FORMED AS A JOINT POWER AUTHORITY**

RECOMMENDED MOTION:

A motion of the Finance Committee to recommend that the City Council approve the City of Salinas contracting to join the Authority of California Cities Excess Liability ("ACCEL"), a group purchasing and risk sharing joint power authority ("JPA").

DISCUSSION:

This recommendation is to contractually move the City of Salinas from a stand-alone position purchasing excess liability insurance to a position purchasing excess liability insurance via a risk financing and purchasing group, ACCEL, a group formed in which twelve California cities are members.

Historically, at least from 1997 – 2017, the City of Salinas had purchased excess liability insurance through its brokerage firm AON Risk Services, Inc. ("Aon"). In June of 2016, for the Fiscal Year 2017 renewal coverage, the City's incumbent insurance carrier, National Casualty Company, refused to quote at the City's standard $1,000,000 self-insured retention ("SIR") and stated that it would offer a quote only at the $5,000,000 SIR level due it suffering or seeing large losses within the liability market in California regarding public agencies, emphasizing concerns about employment practices liability and police professional liability exposures. The City of Salinas was not prepared to retain a $5,000,000 SIR so it purchased coverage through Aon via an alternate excess liability carrier, Allied Word Assurance Co., with the $1,000,000 SIR, but for that purchase the City's premium came at an additional 22% cost over the expiring year.

After being (effectively) dropped by its incumbent carrier and the City suffering a significant premium increase, the City chose to be more aggressive in pursuit of coverage the following year by not relying solely on its incumbent broker, Aon. At the insurance renewal period for 2018-2019 coverage (such renewal began at the start of FY19 on July 1, 2018) after requesting and evaluating liability proposals from two competing brokers, Aon and Alliant Insurance Services, Inc. ("Alliant"), the City chose to place coverage via Alliant's proposed Alliant National Municipal Liability program ("ANML"), a group purchase liability program established to insure public agencies across the United States. For FY19 the City of Salinas purchased excess liability coverage with a $1,000,000 SIR and a $10,000,000 limit.

The City of Salinas needs additional limits but due to cost has been reluctant to buy such limits while purchasing on its own in the open market without the leverage of a group purchase. Instead, the City of Salinas has been inquiring within the market for higher quality coverage forms. This would include a potential step-up, year-by-year, approach to purchasing more premium to reach a prudent limit, and for a creative solution to not being out in the market on its own (subjecting the City to higher market fluctuations and lack of leverage) such as belonging to an insurance and risk-sharing pool such as ACCEL.

It is important to note that ACCEL is a JPA formed pursuant to State of California Government Code Sections specifically authorizing local public entities to self-insure, to provide insurance and self-insurance in any combination, to jointly form and fund such arrangements.[1] As such, ACCEL is subject to and adheres to all Brown Act laws. Though ACCEL is a JPA, it contracts for administrative staff and the bulk of the work is done by its member agencies, each of which designate a risk management professional to serve as a Board member. Because ACCEL has no staff members, it does not have any liability for member agency pension obligations, a concern that has been circulating among public agencies which participate in JPAs. In addition, as is prudent business practice, ACCEL's formation and membership agreements contain termination and dissolution procedures and methodologies.

In ACCEL each member retains the first $1,000,000 of liability exposure as its SIR, then members pay a deposit premium to ACCEL so that members share risk in the $1,000,000 - $5,000,000 layer, and after that ACCEL members cease risk sharing and purchase excess liability coverage for $5,000,000 and up, depending on the size of city and its risk tolerance and loss exposures. Smaller ACCEL cities, such as Monterey and Visalia, each purchase limits of $50,000,000 whereas larger ACCEL member cities, such as Anaheim and Santa Monica, each purchase more than $100,000,000 annually in excess limits.

Recently, the City of Salinas submitted an application to ACCEL for membership to determine if Salinas would be a good fit for ACCEL and if ACCEL would be a good fit for Salinas. ACCEL's Board of Directors, upon careful review and evaluation of the City of Salinas's application, loss history, and exposures, by ACCEL's Underwriting Committee, approved Salinas's application to join, subject to Salinas purchasing higher excess limits than it currently has. ACCEL's current formation agreement requires any member city to purchase a minimum of $10,000,000 in limits, but due to those limits being perceived as inadequate in today's public entity litigation climate,

[1] See Government Code Sections 989, 990, 990.4, 990.8, and 6500-6515.

and California being a state with no tort caps, ACCEL's Board voted to allow City of Salinas to join provided that the City purchases at least $15,000,000 in limits.

The ACCEL pool deposit is where cities look to reap savings. With traditional insurance purchases, a city pays a premium for coverage and does not receive any of the money back whether it had losses or the insurance carrier suffered or did not suffer losses at the city's expense. The ACCEL deposit premium functions like a dividend plan, with the pool deposit being returned to the city if it outperforms the actuarial estimated losses in the first excess layer (the risk sharing layer). City members tend to keep a portion of that returned amount ("Retrospective Rating Plan Calculation" or "Retro") within interest-bearing accounts at ACCEL to stave off any future negative development or assessments. In the past ten years, only one ACCEL member has faced assessment and that is due to a high ratio of liability losses compared to its payroll. For evaluation purposes, any member of ACCEL that may face assessments are not penalized with increased premiums, such as an insurer would do (like the 22% mentioned above). ACCEL only aims to collect the amount of funds necessary to offset poor performance (no margin/profit). Because ACCEL's deposit premium is based on an 80% confidence level (i.e. 8 out of 10 years are 'over funded') it is unlikely that a city would face assessment unless consistently poor performance occurs, and in those situations the assessment is likely far less burdensome than the insurance market's premium would be.

For $10,000,000 in liability limits, with a $1,000,000 SIR, the City paid $310,118 for FY2019 coverage. Staff is currently requesting a recommendation to join ACCEL at mid-year, meaning January 1, 2019, with half the amount paid for FY2019 coverage to be returned to the City of Salinas because it is canceling its existing liability coverage at mid-term and joining ACCEL. To join ACCEL initially at a $15,000,000 excess limit will cost the City $244,865.60 for the 6-month period January 1 – June 30, 2019 (priced at $489,782 for coverage for the year but divided in half due to mid-year membership). The $489,782 annual premium to join is based on summing the following:

City of Salinas Payroll:	$57,667,347
ACCEL Pool Deposit ($4Mx$1M):	$340,237
ACCEL Admin Budget:	$40,438
Excess ($10M x $5M):	$109,057

ACCEL has recommended that the City purchase at least $25,000,000 in limits, which would be half the minimum limits of the other 12 ACCEL members, and I agree with the $25,000,000 limit being prudent at this date and time due to litigation settlements and verdicts that have resulted in the California market. To purchase up to the recommended $25,000,000 in limits in future years will cost an additional estimated $26,309 for the $10,000,000 excess $15,000,000 limit.

As aforementioned the $340,237 was determined by applying the actuarially determined formula to the payroll amount at an 80% confidence level; whereas the expected confidence level (50%)

would require a deposit premium of $247,970. So long as the City of Salinas's losses did not go over the 80% confidence level and stayed within the expected confidence layer of the pool, the City for the fiscal year would receive a Retro return of $92,267 (or half that amount, $46,133.50, for the 6-month period). And these returns would be similarly calculated each year.

FISCAL AND SUSTAINABILITY IMPACT:

Due to public entities being perceived as deep pockets and potential large liability exposures, purchasing liability insurance coverage is expensive for municipalities in California. Purchasing it as the City of Salinas, on our own, without any risk sharing and significant group purchasing leverage, is particularly expensive and leaves the City subject to high increases, reduction in quality of coverages, and/or cancellation or non-renewal by liability insurance carriers. In prior years the City's broker repeatedly stated that there were only a couple carriers in the market that would write coverage for the City and the carriers repeatedly intimated that they would demand that City of Salinas retain a higher multi-million dollar SIR. That higher SIR has not yet been forced on the City of Salinas but could be on the horizon. Pursuing a creative solution with public agencies that have created and sustained a high-quality, fiscally-steady joint power authority insurance pool since 1989 is in the City's best interest to achieve a sustainable fiscal outlook from a claims, insurance, and liability perspective.