

**EMPLOYMENT RISK MANAGEMENT AUTHORITY (ERMA)  
SPECIAL MEETING OF THE BOARD OF DIRECTORS**

**AMENDED AGENDA**

Friday, May 17, 2019  
9:00 a.m.

Telephone #: (803) 566-7621  
Participant Passcode: 107396#

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

York, 1750 Creekside Oaks Drive, Suite 200, Sacramento, CA  
PERMA, 36-951 Cook Street, Suite 101, Palm Desert, CA  
City of Rancho Cucamonga, 10500 Civic Center Drive, Rancho Cucamonga, CA  
Greater LA VCD, 12545 Florence Avenue, Santa Fe Springs, CA  
City of Brisbane, 50 Park Place, Brisbane, CA  
City of Riverbank, 6707 3<sup>rd</sup> Street, Riverbank, CA  
Western Contra Costa Transit Authority, 601 Walter Avenue, Pinole, CA  
City of Laguna Hills, 24035 El Toro Road, Laguna Hills, CA  
MPA, 1911 San Miguel Drive, Suite 110, Walnut Creek, CA  
City of Hollister, 375 Fifth Street, Hollister, CA  
City of Shasta Lake, 1650 Stanton Drive, Shasta Lake, CA  
Housing Authority of the County of Contra Costa, 3133 Estudillo Street, Martinez, CA

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 are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact Jennifer Jobe at (916) 244-1141 or (916) 244-1199 (fax). Requests must be made as early as possible, and at least one full business day before the start of the meeting.*

*Documents and materials relating to an open session agenda item that are provided to the ERMA Board of Directors less than 72 hours prior to a regular meeting will be available for public inspection and copying at 1750 Creekside Oaks Drive, Suite 200, Sacramento, CA 95833. The documents will also be available on the agency's website at [www.ermajpa.org](http://www.ermajpa.org).*

- Page**
- 1. CALL TO ORDER**
  - 2. ROLL CALL**
  - 3. APPROVAL OF AGENDA AS POSTED (OR AMENDED)**

**4. PUBLIC COMMENTS** - This time is reserved for members of the public to address the Board relative to matters of ERMA not on the agenda. No action may be taken on non-agenda items unless authorized by law. Comments will be limited to five minutes per person and twenty minutes in total.

**5. COVERAGE MATTERS**

**3** \*A. City of Parlier's (CSJVRMA) Request for Arbitration or Withdrawal from Participation in ERMA

*Recommendation: Staff recommends the Board of Directors approve the City of Parlier's request for withdrawal from participation in ERMA, effective June 30, 2019.*

**6. CLOSING COMMENTS**

This time is reserved for comments by the Board members and staff and to identify matters for future Board business.

A. Board

B. Staff

**7. ADJOURNMENT**

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City of Merced, 678 W. 18<sup>th</sup> Street, Merced, CA  
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**COVERAGE MATTERS**

**SUBJECT: City of Parlier's (CSJVRMA) Request for Arbitration or Withdrawal from Participation in ERMA**

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**BACKGROUND AND STATUS:**

The Board of Directors met in closed session during a regularly scheduled meeting on February 8, 2019, to consider the City of Parlier's (City) appeal of a denial of coverage for ERMA Case File No. E-CSJVRMA-2018-001 (Escobar). After hearing an appeal presented by Neal Costanzo, Parlier City Attorney, the Board affirmed Greg O'Dea's, ERMA General Counsel, October 2, 2018, coverage denial. Notice was provided to the City of the Board's decision on February 11, 2019.

In accordance with ERMA's Memorandum of Coverage (MOC), a member, once having exhausted all rights to appeal as established by the Bylaws, may contest the Board's decision by submitting a written request for binding arbitration within (90) ninety days of written notice of the Board's decision.

On May 9, 2019, the City submitted a written request for arbitration or consideration of immediate withdrawal from participation in ERMA.

Should the Board wish to enter in to binding arbitration with the City, the following applicable provisions in the MOC apply:

***SECTION VII – CONDITIONS***

7. *Arbitration*

*Arbitration shall be conducted pursuant to the California Code of Civil Procedure. Arbitration shall be conducted by a single arbitrator. No arbitrator shall be employed or affiliated with the Authority or the Covered Party(ies) or any Member of the Authority.*

*The selection of the arbitrator shall take place within twenty (20) calendar days from the receipt of the request for arbitration. The arbitration hearing shall commence within forty-five (45) calendar days from the date of the selection of the arbitrator.*

*Each party shall bear one-half the cost of the selected arbitrator. In addition, each party shall be responsible for its own attorneys' fees, costs and expenses of arbitration.*

*In the event that the Member prevails in the coverage dispute in the arbitration, the following shall apply to any monetary award in the Member's favor:*

- (A) Any interest awarded shall be at the Local Agency Investment Fund (LAIF) rate + 1% in effect at the time of the award;*
- (B) Any attorneys' fees award for Defense Costs of the underlying Claim above the Member's Retained Limit shall be subject to all provisions of the ERMA Litigation Management Guidelines and shall not exceed the hourly rate established by the ERMA Litigation Management Guidelines in effect at the time of the Occurrence of the underlying Claim;*
- (C) Any award shall be subject to and shall not exceed the Defense Costs and indemnity Coverage under the Limit of Coverage afforded under the ERMA Memorandum in effect at the time of the Occurrence of the underlying Claim;*
- (D) No award at the arbitration shall be permitted for damages of any nature or in any amount other than as expressly allowed in this Section VII, subsection 7. By way of example, and without limitation, no award shall be permitted for consequential damages, extra contractual damages, tort damages or damages for any alleged breach of the implied covenant of good faith and fair dealing; and*
- (E) Any award for Defense Costs and/or indemnity with respect to the underlying Claim shall be treated the same for purposes of the determination of the Member's Ex Mod or premium calculation, as if the Claim had been originally covered by ERMA.*

*Except for notification of appointment and as provided in the California Code of Civil Procedure, there shall be no communication between the parties and the arbitrator relating to the subject of the arbitration other than at oral hearings.*

*The procedures set forth in California Code of Civil Procedure Section 1283.05 relating to depositions and discovery shall apply to any arbitration pursuant to this paragraph 8.*

*Except as provided otherwise above, arbitration shall be conducted as provided in Title 9 of the Code of Civil Procedure (commencing with Section 1280).*

*The decision of the arbitrator shall be final and binding, and shall not be subject to appeal.*



In consideration of the City's request for an immediate withdrawal from ERMA, the following provision of the Joint Powers Agreement applies:

**ARTICLE XXI – WITHDRAWAL**

*Any Member of ERMA may withdraw from its status as a Member and as a party to the Agreement only after participation for at least three full Program Years. The withdrawal may be effected only at the end of a fiscal year or at any other time which is agreed to by the Board or Executive Committee. Any withdrawing Member must notify ERMA in writing at least six (6) months prior to the end of the fiscal year that it intends to withdraw. A notice of withdrawal shall be final and irreversible upon its receipt by the Authority unless the Board or Executive Committee authorizes it to be rescinded by the Member.*

*The withdrawal of any Member shall not terminate its responsibility to contribute its share of Deposit Premiums, unpaid insurance or Excess Insurance premiums, surcharges, administration costs, claims (including unreported claims), or funds to any Coverage Program until all claims, or other unpaid liabilities, covering the period of participation by the Member in the Coverage Program have been finally resolved and a determination of the final amount of payments due by the Member or credits to the Member has been made by the Board or Executive Committee.*

*After withdrawal, the withdrawing Member shall continue to be responsible for any Assessments made for years of membership.*

As stated in the attached request for arbitration, it is the City's preference the Board grant acceptance of an immediate withdrawal from participation in ERMA. As noted above, ERMA requires notice of intent to withdraw "at least six (6) months prior to the end of the fiscal year that it intends to withdraw." Given the unique circumstances of the City's request, staff recommends the Board of Directors approve the City's immediate withdrawal.

**RECOMMENDATION:**

*Staff recommends the Board of Directors approve the City of Parlier's request for withdrawal from participation in ERMA, effective June 30, 2019.*

**REFERENCE MATERIALS ATTACHED:**

- Letter of Request for Arbitration dated May 9, 2019

LAW OFFICES  
**COSTANZO & ASSOCIATES**

NEAL E. COSTANZO  
MICHAEL G. SLATER

A PROFESSIONAL CORPORATION  
575 E. LOCUST AVENUE  
SUITE 115  
FRESNO, CALIFORNIA 93720-2928  
(559) 261-0163

FAX (559) 261-0706  
OUR FILE NO. 02891-005

May 9, 2019

Via Email and Mail  
Gregory P. O'Dea  
General Counsel, ERMA  
Longyear, O'Dea & Lavra, LLP  
3620 E. American River Drive, Suite 230  
Sacramento, CA 95864  
[odea@longyearlaw.com](mailto:odea@longyearlaw.com)

**RE: Request for Arbitration - Your ERMA Case File No. E-CSJVRMA-2018-001 (Sam Escobar Claim)**

Dear Mr. O'Dea:

This will serve as the request for arbitration prescribed by the Memorandum of Coverage, of your determination, or the determination of the Board of the Employment Risk Management Authority (ERMA) on February 11, 2019 concerning the above matter. The City of Parlier views the determination of the referenced matter as a blatant breach of ERMA's obligations under the Memorandum of Coverage. Consequently, rather than proceed to arbitration, Parlier is more inclined to immediately withdraw from ERMA. Kindly let me know if ERM will permit the immediate withdrawal of the City of Parlier from ERMA, without payment of any charge not already incurred, and without any formal notice, other than this letter.

If not, your Memorandum of Coverage requires a selection of an arbitrator to take place within 20 days from your receipt of this request. It does not provide for any methodology for that selection to be made. The provision does state the arbitration shall be conducted pursuant to the provisions of the Code of Civil Procedure. CCP §1281.6 provides that when an arbitration agreement like this does not provide for a method of appointing an arbitrator, the parties to the agreement who seek arbitration and against whom arbitration is sought may agree on a method of appointing an arbitrator. In absence of that agreement, the court on petition of the party to the arbitration agreement may appoint the arbitrator.

If ERMA wishes to proceed to the arbitration, and declines to allow the immediate withdrawal of the City of Parlier as a member of ERMA, kindly provide me with your proposal concerning the selection of an arbitrator to address your declination of coverage under the Memorandum of Coverage for what we understand to be a non-existent claim, based on the City's purported failure to cooperate in your administration of that non-existent claim.

Thank you for your attention to this matter.

Sincerely,

**COSTANZO & ASSOCIATES**

Neal E. Costanzo

NEC/js

C/C Antonio Gastelum  
Bertha Augustine  
Jennifer Jobe  
Kathy Maylin  
Julia Byrd  
Jeanette Workman