

EMPLOYMENT RISK MANAGEMENT AUTHORITY

(ERMA)

BYLAWS

AS AMENDED EFFECTIVE APRIL 30, 2019

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BYLAWS

ARTICLE I

PREAMBLE

The Employment Risk Management Authority (*ERMA*) is established for the purpose of operating and maintaining a cooperative program of self-insurance and risk management in the area of Employment Practices Liability and to provide a forum for the discussion, study, development, training and implementation of practices and procedures in that area.

ARTICLE II

PURPOSES

The purposes of *ERMA* are:

- A. To provide a self-insurance and risk management program, a system that will achieve the following objectives for the benefit of *ERMA's Members*:
 - 1. Reduced costs of pooled coverage and of excess commercial insurance or reinsurance through effective loss prevention and control practices and combined purchasing power;
 - 2. Reduced cost of claims administrative services through central management, volume, and combined purchasing power;
 - 3. Increased stability of pooled rates and rates in the excess commercial insurance or reinsurance markets through the size of combined membership, longer duration of commercial insurance or reinsurance agreements, and effective loss control practices; and

4. Reduced severity and frequency of losses of members through training and the implementation of standard practices and procedures.
- B. To achieve through training, loss prevention and audit compliance techniques:
1. Established reserve funds for easing the financial impact of large losses on the *Members*; and
 2. Increased awareness of policies and practices causing losses and providing guidance in the alleviation of such policies and practices.
- C. To provide funding programs:
1. To pay claims and benefits as authorized by *ERMA's Members*;
 2. To establish reserves for expected future claims payment;
 3. To jointly purchase reinsurance or excess commercial insurance, where such purchase is advantageous to the *Members* as a whole; and
 4. To 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.

ARTICLE III

DEFINITIONS

The terms in these Bylaws shall be as defined herein and in the *Agreement* creating the Employment Risk Management Authority, unless otherwise specified herein.

- A. "Agreement" shall mean the Joint Powers Agreement creating the Employment Risk Management Authority.
- B. "Alternate" shall mean the person designated by the *Member* to act as a director of *ERMA* in the absence of the *Representative*. The *Alternate* shall have the same responsibility, power and authority as the *Representative*.
- C. "ERMA" shall mean the Employment Risk Management Authority, an agency created by the *Agreement*.
- D. "Board" or "Board of Directors" shall mean the governing body of *ERMA* composed of one *Representative* of each *Member*.
- E. "Coverage Programs" shall mean coverages provided by *ERMA* pursuant to a *Memorandum of Coverage* and/or provided by a purchased *Excess Insurance* or reinsurance.
- F. "Deposit Premium" shall mean the annual dollar amount determined by the *Board of Directors* or Executive Committee which is payable by each *Member* as its established share of the funding required to cover the financial obligations of a *Coverage Program* in which the *Member* participates.
- G. "Excess Insurance" shall mean that commercial insurance or reinsurance purchased by *ERMA* to cover losses in excess of *ERMA's Coverage Program* limits and/or each *Member's Retained Limit*.
- H. "Master Program Document" shall mean the document that sets forth the operations, policies and procedures of a given *Coverage Program*.

- I. "Member" shall mean a governmental entity, including any commissions, agencies, districts, authorities, boards, or other similar government entity under the direct control of the governmental entity, that is eligible to participate in a joint powers authority. A Member is one who has been accepted into ERMA and is a Named Covered Party in the Memorandum of Coverage and Endorsements thereto.
- J. "Memorandum of Coverage" shall mean the negotiated agreement among the Members of the Authority adopted annually by the Board of Directors specifying the type, amount, and conditions of coverage provided to each participant.
- K. "Program Year" shall mean a period of time determined by the *Board* or Executive Committee, usually 12 months, into which each *Coverage Program* shall be segregated for purposes of accounting and record-keeping.
- L. "Representative" shall mean the person designated by the *Member* to act as a director of *ERMA*. The *Representative* shall have the authority to bind the *Member* on any and all matters relating to the business of *ERMA*.
- M. "Retained Limit" shall mean the amount of a claim, including all defense fees, investigation costs, expert costs, vendor costs and any other related costs which the *Member* must incur or become liable for before *ERMA*, or any applicable purchased *Coverage Program*, is obligated to pay.

ARTICLE IV

OFFICES

The principal office for the transaction of business of *ERMA* and receipt of all notices is hereby fixed and located as described in Appendix A attached hereto and incorporated herein by reference. The

Board or Executive Committee shall have the authority to change the location of the principal office.

Other business offices may at any time be established by the *Board* or Executive Committee at any place or places where *ERMA* is authorized to do business.

ARTICLE V

DIRECTORS

Each Participating JPA in *ERMA* and the Oakland Housing Authority and Housing Authority of the County of Contra Costa shall appoint a *Representative* to the *Board of Directors*. The appointment shall be in writing, directed to *ERMA* at its designated principal office and shall remain in effect until the receipt of a notice designating a replacement. Each Participating JPA in *ERMA*, the Oakland Housing Authority and the Housing Authority of the County of Contra Costa shall also designate an *Alternate*, in the manner described above, to act in the absence of its duly appointed *Representative*.

Any newly approved Participating JPA shall also appoint a Representative and an Alternate. Any newly approved individual members shall not be allowed a Representative and Alternate.

ARTICLE VI

ELECTION, APPOINTMENT AND DUTIES OF OFFICERS

A. ELECTION OF OFFICERS

The President, Vice President, and Treasurer/Auditor shall be elected, as individuals, from among the *Representatives* to the *Board of Directors* and serve for a term of two years.

Voting for officers will be conducted at the *Board* meeting immediately preceding July 1. Each Representative shall cast one vote for each office. The *Board* or Executive Committee may designate a nominating committee to facilitate this process. The candidate receiving a plurality of

votes for the particular office will be elected and will assume the office upon his/her election. In the event of a tie vote, with no candidate receiving a plurality, those not involved in the tie vote will be eliminated and the remaining candidates will draw lots.

The President, Vice President, and Treasurer/Auditor will serve for their elected term of office until termination of employment or office with a *Member*; or until removal from office by the affirmative vote of two-thirds of the *Members* of the entire *Board of Directors*. Vacancies in the offices of President, Vice President, or Treasurer/Auditor will be filled by a majority vote of the remaining Representatives until the next scheduled election.

All information received by the *Board of Directors* in a closed session shall be confidential. However, a *Representative*, or an *Alternate* acting in the place of a *Representative*, who is also on the *Member's* legislative body may disclose information obtained in a closed session that has direct financial or liability implications for that *Member* to the following individuals:

1. Legal counsel of that *Member* for purposes of obtaining advice on whether the matter has direct financial or liability implications for that *Member*.
2. Other individuals of the *Member's* legislative body present in a closed session of that *Member*.

B. APPOINTMENT OF OFFICERS

The President will appoint such other officers as deemed appropriate subject to approval of the *Board* or Executive Committee.

C. DUTIES OF OFFICERS

1. President - The President will preside at all meetings of *ERMA*. The President shall

appoint the members of committees as necessary or appropriate for carrying out the activities of *ERMA*. Committees appointed by the President may hold office beyond the President's term subject to the approval of the new President. The President shall execute documents on behalf of *ERMA* as authorized by the *Board of Directors* or Executive Committee and shall serve as the primary liaison between this and any other organization.

2. Vice President - In the absence of or temporary incapacity of the President, the Vice-President shall exercise the functions covered in "1" above. The Vice-President shall also serve as the auditor/controller of *ERMA*.
3. Treasurer/Auditor - The duties of the Treasurer/Auditor shall be those specified in Sections 6505.5 or 6505.6 of the California Government Code, to receive and safekeep all money coming into the treasury, and to comply with all laws governing the deposit and investment of funds. Per Section 53607, the Treasurer will submit a monthly report of investment transactions to the *Board* or Executive Committee, as well as a report to the *Board* or Executive Committee on a regular basis that shall disclose the information as outlined in Section 53646.
4. Administrator - The Administrator shall perform all duties specified in *the Master Program Document*, and shall be present at all meetings to perform such duties as the *Board* or Executive Committee may specify.

ARTICLE VII

BOARD OF DIRECTORS MEETINGS

There shall be at least one regular meeting of the *Board of Directors* each year, which shall be designated as the annual membership meeting. The President may request special meetings of the *Board* as needs dictate. Special meetings may also be called by at least one-third of the

representatives to the *Board*. Notice of such special meetings shall be delivered personally, by electronic mail, by electronic facsimile transmission or by mail, as provided by state law to each *Representative* to the *Board* at least twenty-four (24) hours before the time of such meeting.

A regular or special meeting of the *Board* may be canceled or postponed by the President by notice delivered personally, by electronic mail, by electronic facsimile transmission or by mail, as provided by state law to each *Representative* to the *Board* at least twenty-four (24) hours before the time of such meeting. The annual membership meeting may be postponed but not canceled.

No business may be transacted by the *Board* or other appointed committees without a quorum of its respective *Members* being present. A quorum of the *Board* shall consist of a majority of its *Members*. Unless otherwise required, a majority of the *Members* present must vote in favor of a motion to approve it.

An agenda of each *Board* meeting shall be published and posted at the principal office of *ERMA* in accordance with applicable state law.

Official minutes of the *Board* meetings shall be kept by *ERMA* in a minute book at its principal office and shall be distributed to the *Members* within 15 business days.

ARTICLE VIII

DUTIES OF DIRECTORS

The *Board of Directors* shall be responsible for governing *ERMA* either directly or by delegation to other bodies or persons unless prohibited by law or the *Agreement* and shall exercise all those powers not specifically reserved to the *Members* in the *Agreement*. Each *Representative* shall be entitled to cast one vote in all matters requiring a vote, except in the case of an actual or potential conflict of interest.

ARTICLE IX
EXECUTIVE COMMITTEE

There may be an Executive Committee, pursuant to Article IX of the Joint Powers *Agreement*. The members of the Committee shall be the President, Vice President, Treasurer/Auditor, and up to ten other *Representatives* of the *Board of Directors*. The *Representatives* who are not officers 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. One-half of the *Representatives* who are not officers 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 one-half of the *Representatives* who are not officers shall be elected in the same manner as the officers. However, their two-year terms shall commence on July 1 of each alternate year.

The Executive Committee will meet as required by business, but not less than two times a year. Such meetings will be duly noticed and an agenda will be distributed to all *Board* members. 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.)

The Executive Committee shall have the same authority as that of the *Board* except for those authorities specifically reserved unto the *Members* in Article VII. A. of the Joint Powers *Agreement*.

Any action taken by the Executive Committee may be appealed to the *Board* by filing a written request with the *Administrator* within sixty (60) days from the date of such action. Upon receipt of such request, the Administrator shall place the request for appeal on the agenda of the next regularly scheduled *Board* meeting. The decision of the *Board* shall be final.

ARTICLE X
ADMINISTRATOR

There will be an *ERMA* Administrator appointed by the *Board*. The Administrator shall be responsible for the day-to-day administration, management, and operation of *ERMA*'s programs of risk management and he/she will be subject to the direction and control of the *Board* and Executive Committee. The Administrator may, but need not be, a consultant or an employee of a corporation or *ERMA*.

The Administrator, either personally or through delegation, shall:

1. Monitor the status of *ERMA*'s programs and operations, losses, administrative and operational costs, service companies' and brokers' performance and report to the *Board* or Executive Committee;
2. Prepare a budget in accordance with Article XII;
3. Prepare a report at least annually that compares each fiscal year's budgeted to actual expenditures;
4. Engage the services of an independent financial auditor selected by the *Board* or Executive Committee and present the findings to the *Board* or Executive Committee;
5. Invoice *Members* for *Deposit Premiums* and other amounts due;
6. Report to the *Board* or Executive Committee any invoices not paid and outstanding for more than thirty (30) days;

7. Prepare vouchers, invoices, or other demands for payment, and submit the demands to the Treasurer/Auditor and/or another authorized signer for payment;
8. Maintain detailed financial records of all income, expenses, cash deposits, and withdrawals;
9. Maintain financial records according to generally accepted accounting principles including the Governmental Accounting Standards Board guidelines;
10. Present timely quarterly and annual financial statements to the *Board* or Executive Committee;
11. Assist the *Board* or Executive Committee in selecting brokers, insurance companies, actuaries, auditors, loss control service providers, investment advisors, and claims administrators;
12. Select and supervise *ERMA* employees and agents as authorized by the *Board* or Executive Committee;
13. Conduct the business of *ERMA* in a manner consistent with the standards set forth by the California Association of Joint Powers Authorities (CAJPA) for their accreditation program; and
14. Perform whatever functions necessary and within the Administrator's authority to manage the daily activities of *ERMA* and its *Coverage Programs*.

ERMA shall compensate the Administrator or his/her employer for services to *ERMA* in such amount and manner as may be fixed from time-to-time by the *Board* or Executive Committee. Details respecting compensation, termination, and other employment related matters pertaining to the

Administrator shall be governed by the Bylaws and such terms and conditions as the *Board* or Executive Committee shall set forth in a contract or agreement.

ARTICLE XI
COVERAGE PROGRAM

ERMA shall establish a *Coverage Program* in the area of Employment Practices Liability. The *Board* or Executive Committee shall establish the levels of coverage to be offered for the program, determine the financial contributions to be required of participants at each level, and establish procedures for the administration of the program.

ARTICLE XII
BUDGET

On or before June 20 of each year, the *Board* or Executive Committee shall adopt the budget for the next fiscal year.

ARTICLE XIII
RECEIPT AND DISBURSEMENT OF FUNDS

Revenues of *ERMA* shall be received at its principal office. The Treasurer/Auditor shall safeguard and invest funds in accordance with *ERMA's* investment policy.

The Board of Directors shall establish all bank accounts and authorized signers by resolution. All checks disbursing funds of *ERMA* shall be signed by the appropriate number of officers as established by action of the *Board* or Executive Committee.

A register of all checks issued since the previous *Board* or Executive Committee meeting shall be provided at each subsequent *Board* or Executive Committee meeting for approval.

The Administrator shall be authorized to make all expenditures for goods or services without specific approval, to the extent such funds have been included and approved by adoption of the budget or as previously approved by the *Board* or Executive Committee.

ARTICLE XIV

BILLINGS

A. ANNUAL BILLINGS

Each year, not later than July 1, *ERMA* shall bill each *Member* for all *Deposit Premiums* for the next *Program Year*. The annual billing shall be due and payable on July 15, and shall be delinquent if not paid on or before the last working day in July.

B. ADDITIONAL BILLINGS

There may be additional billings in accordance with *ERMA's* governing documents, which billings may include but are not limited to those portions of a *Member's Retained Limit* which a *Member* has failed to pay or is habitually late in paying.

C. INTEREST ON DELINQUENT AMOUNTS PAYABLE

Interest shall accrue on all delinquent amounts due and payable to *ERMA* at a rate of seven (7) percent per annum unless otherwise approved by the *Board*. The Board shall have the discretion to waive interest due on a delinquent amount but only one time per member every five years.

D. FAILURE TO PAY BILLINGS OR INTEREST

Failure to pay billings or the accrued interest may result in expulsion of the *Member* from *ERMA* in accordance with the *ERMA Agreement*.

E. DUTIES OF WITHDRAWN OR EXPELLED MEMBERS

Withdrawn or expelled *Members*, or individual participants of a *Member*, which have formerly participated in a *Coverage Program* shall be required to pay all applicable billings for the *Program Years* in which they participated and such subsequent years for which continuing services are required. Delinquent billings shall be treated in the same manner as set forth above as if the withdrawn or expelled *Member*, or individual participants of a *member*, still participated in a *Coverage Program*.

F. PENALTIES FOR NON-PAYMENT BY FORMER MEMBER

Failure to pay billings or accrued interest thereon shall constitute breach of the *Agreement* between the former *Member*, or individual participants of a *member*, and *ERMA*. The former *Member* shall be liable for the billings, accrued interest, and all costs incurred by *ERMA* in the enforcement of all provisions set forth in this Document.

ARTICLE XV

AUDITS

A. FINANCIAL AUDIT

The *Board* or Executive Committee shall cause to be made, by a qualified CPA, an annual audit of the accounts and records of *ERMA*. The minimum requirements of the audit shall be those prescribed by state law.

In accordance with Government Code Section 6505 and within six (6) months of the end of each fiscal year, a copy of the annual audit shall be filed with the State Controller and with the county where *ERMA* conducts its principal operations.

ERMA shall bear all costs of the audit. Such costs shall be charged against the operating funds of *ERMA*.

ARTICLE XVI

NEW MEMBERS

Any public agency acceptable to the *Board of Directors* or Executive Committee shall be eligible for membership in *ERMA*. A prospective member will submit the information required for application to *ERMA*.

Upon review of a prospective *Member's* application, by the Underwriting Committee, the Administrator will prepare a report that will be presented to the *Board of Directors* or Executive Committee and the prospective *Member* will be invited to attend a meeting of the *Board of Directors* or Executive Committee to respond to questions concerning the application. The affirmative vote of two-thirds of the *Representatives* of the entire *Board of Directors* or Executive Committee is necessary for admission to *ERMA*.

ARTICLE XVII

EXECUTION OF CONTRACTS

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

ARTICLE XVIII

NOTICES

Notices to *ERMA* shall be in writing and delivered to the mailing address of *ERMA*. Notices to *Members* shall be in writing and delivered to the appointed *Representative* or mailed to the address of record.

Reportable claims against *Members* shall be forwarded to the mailing address of *ERMA*.

ARTICLE XIX

EFFECTIVE DATE

These Bylaws shall be effective April 30, 2019. The adoption of the Bylaws shall supersede any prior amendments, by resolution or otherwise and to the extent that prior amendments are not included or are contradictory to any provisions contained herein, they are hereby specifically revoked.

ARTICLE XX

AMENDMENTS

These Bylaws may be amended by a majority vote of the entire *Board of Directors* or Executive Committee provided that any amendment is compatible with the purposes of *ERMA*, is not in conflict with the *Agreement*, and has been submitted to the *Board of Directors* or Executive Committee at least thirty (30) days in advance. Any such amendment shall be effective immediately, unless otherwise designated.

ARTICLE XXI
SEVERABILITY

Should any portion, term, condition or provision of these Bylaws be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions and provisions shall not be affected thereby.

ARTICLE XXII
SUBORDINATION

Should any portion, term, condition or provision of these Bylaws be in conflict with the *Agreement*, the terms of the Bylaws will be subordinate to the *Agreement*.

ARTICLE XXIII
RECORD RETENTION POLICY

ERMA's records will be retained in accordance with the policy adopted by the *Board* or Executive Committee.

APPENDIX "A"

The principal address of the Employment Risk Management Authority (*ERMA*) for the transaction of business and receipt of all notices shall be:

Employment Risk Management Authority (*ERMA*)

1750 Creekside Oaks Drive, Suite 200

Sacramento, CA 95833

Phone (800) 541-4591 Fax (916) 244-1199