

JOINT POWERS AGREEMENT

CREATING THE

EMPLOYMENT RISK MANAGEMENT AUTHORITY

(ERMA)

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(ERMA)**

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TABLE OF CONTENTS

RECITALS.....	1
ARTICLE I.....	2
CREATION OF EMPLOYMENT RISK MANAGEMENT AUTHORITY	2
ARTICLE II	2
PURPOSES	2
ARTICLE III.....	3
DEFINITIONS.....	3
ARTICLE IV.....	5
PARTIES TO AGREEMENT.....	5
ARTICLE V	5
TERM OF AGREEMENT	5
ARTICLE VI.....	5
POWERS OF ERMA	5
ARTICLE VII	7
MEMBERS POWERS AND RESPONSIBILITIES.....	7
ARTICLE VIII.....	8
BOARD OF DIRECTORS.....	8
ARTICLE IX.....	8
EXECUTIVE COMMITTEE.....	8
ARTICLE X	8
ELECTION, APPOINTMENT AND DUTIES OF OFFICERS	8
ARTICLE XI.....	9
MEETINGS AND RECORDS.....	9
ARTICLE XII	9
BYLAWS AND ADMINISTRATIVE POLICIES AND PROCEDURES.....	9
ARTICLE XIII.....	10
FISCAL YEARS	10

Table of Contents (Continued)

ARTICLE XIV	10
BUDGET	10
ARTICLE XV	10
FINANCIAL AUDITS.....	10
ARTICLE XVI.....	10
ESTABLISHMENT AND ADMINISTRATION OF FUNDS	10
ARTICLE XVII	11
DEPOSIT PREMIUM.....	11
ARTICLE XVIII	11
ASSESSMENTS AND DIVIDENDS	11
ARTICLE XIX.....	11
COVERAGE PROGRAMS	11
ARTICLE XX	12
NEW MEMBERS	12
ARTICLE XXI.....	12
WITHDRAWAL.....	12
ARTICLE XXII	13
EXPULSION.....	13
ARTICLE XXIII	13
EFFECT OF WITHDRAWAL OR EXPULSION	13
ARTICLE XXIV	14
TERMINATION AND DISTRIBUTION.....	14
ARTICLE XXV	14
NOTICES.....	14
ARTICLE XXVI.....	15
PROHIBITION AGAINST ASSIGNMENT	15
ARTICLE XXVII.....	15
AMENDMENTS.....	15
ARTICLE XXVIII	15
SEVERABILITY	15
ARTICLE XXIX.....	15
HOLD HARMLESS AND INDEMNIFICATION	15
ARTICLE XXX	16
AGREEMENT COMPLETE	16
ARTICLE XXXI.....	16
EXECUTION OF COUNTERPARTS.....	16

**EMPLOYMENT RISK MANAGEMENT AUTHORITY
(ERMA)**

This Agreement is made by and among the public entities listed in Appendix A (Member Entities), all of which are public entities organized and operating under the laws of the State of California and each of which is a local public entity as defined in California Government Code Section 989, as it may be amended from time to time.

RECITALS

1. The following state laws, among others, authorize the *Members* to enter into this *Agreement*:
 - A. Government Code Sections 989 and 990 permitting a local public entity to insure itself against liability and other losses;
 - B. Government Code Section 990.4 permitting local public entity to provide insurance and self-insurance in any desired combination;
 - C. Government Code Section 990.8 permitting two or more local entities to enter into an agreement to jointly fund such expenditures under the agency to Government Code Sections 6500-6515; and
 - D. Government Code Sections 6500-6515 permitting two or more local public entities to jointly exercise under an agreement any power which is common to each of them.

2. The governing board of each undersigned agency has determined that it is in its own best interest and in the public interest that this *Agreement* be executed and that it shall participate as a *Member* of the public entity created by this *Agreement*.

NOW, THEREFORE, the undersigned, in consideration of the mutual benefits, promises and agreements set forth below, hereby agree as follows:

ARTICLE I

CREATION OF EMPLOYMENT RISK MANAGEMENT AUTHORITY

Pursuant to Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500), the parties hereto hereby create a public authority, separate and apart from the parties hereto, to be known as the Employment Risk Management Authority, hereinafter referred to as *ERMA*. Pursuant to Government Code Section 6508.1, the debts, liabilities, and obligations of this Authority shall not constitute debts, liabilities, or obligations of the Member Entities.

ARTICLE II **PURPOSES**

This *Agreement* is entered into by *Members* pursuant to the provisions of California Government Code Sections 990, 990.4, 990.8, and 6500, et seq., to:

- A. Develop effective risk management programs to reduce the amount and frequency of their losses;
- B. Share the risk of self-insured losses; and
- C. Jointly purchase *excess insurance* and administrative and other services including, but not limited to: claims adjusting, data processing, risk management, litigation management, accounting services, actuarial services, legal services, and training and loss prevention services in connection with any of the *Coverage Programs* for said parties. These purposes shall be accomplished through the exercise of the powers of the *Members* jointly in the creation and operation of *ERMA*.

It is also the purpose of this *Agreement* to provide for the inclusion, at a subsequent date, of such additional public entities organized and existing under the Constitution or laws of the State of California as may desire to become parties to this *Agreement* and *Members* of *ERMA*, subject to Article XIX, to the extent permitted by law.

It is also the purpose of this *Agreement* to provide for the removal of *Members* for cause or upon request.

ARTICLE III
DEFINITIONS

Unless the context otherwise requires, the following terms shall be defined as herein stated:

- 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. “Assessment” shall mean an amount determined by the *Board of Directors* or Executive Committee to be paid by each *Member* as necessary to meet *ERMA's* obligations.
- D. “ERMA” shall mean the Employment Risk Management Authority created by the *Agreement*.
- E. “Board” or “Board of Directors” shall mean the governing body of *ERMA* composed of a representative of each *Member*.
- F. “Coverage Programs” shall mean coverages provided directly by *ERMA* pursuant to a *Memorandum of Coverage* and/or provided by a purchased coverage.
- G. “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 each *Coverage Program* in which the *Member* participates.

- H. “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*.
- I. “Master Program Document” shall mean the document that sets forth the operations, policies and procedures of a given *Coverage Program*.
- J. “Member” shall mean any organization that is a party to the *Agreement*.
- K. “Memorandum of Coverage” shall mean a document issued by *ERMA* to *Members* specifying the type, amount and conditions of coverage provided to each participant by *ERMA*.
- L. “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.
- M. “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*.
- N. “Retained Limit” shall mean the amount of a claim which the *Member* must pay or become liable for before *ERMA*, or any applicable purchased *Coverage Program*, is obligated to pay.

ARTICLE IV

PARTIES TO AGREEMENT

Each party to this *Agreement* certifies that it intends to, and does, contract with all other parties who are signatories of this *Agreement* and, in addition, with such other parties as may later be added as

parties to, and signatories of, this *Agreement* pursuant to Article XIX. Each party to this *Agreement* also certifies that the deletion of any party from this *Agreement* shall not affect this *Agreement* or the remaining parties' intent to contract as described above with the other parties to the *Agreement* then remaining.

ARTICLE V
TERM OF AGREEMENT

This *Agreement* shall become effective when executed by five or more public entities with a combined payroll of \$500,000,000, or 15,000 full-time equivalent employees, and shall continue in full force until terminated in accordance with Article XXIII.

ARTICLE VI
POWERS OF ERMA

ERMA is authorized, in its own name, to do all acts necessary to fulfill the purposes of this *Agreement* as referred to in Article II, including, but not limited to:

- A. Make and enter into contracts;

- B. Incur debts, liabilities and obligations; but no debt, liability or obligation of *ERMA* is a debt, liability or obligation of any *Member*, except as otherwise provided by Articles XXII and XXIII;

- C. Issue bonds or other instruments of indebtedness;
- D. Acquire, hold or dispose of real and personal property;
- E. Receive contributions and donations of property, funds, services and other forms of assistance from any source;
- F. Sue and be sued in its own name;
- G. Employ agents and employees;
- H. Lease real or personal property, including that of a *Member*;
- I. Receive, collect, invest and disburse monies;
- J. Develop and administer *Coverage Programs* as the *Board* or Executive Committee may approve;
- K. Undertake such other activities as may be necessary to carry out the purposes of this *Agreement*; and
- L. To admit and expel *Members*.

These powers shall be exercised in the manner provided by applicable law and as expressly set forth in this *Agreement*. ERMA's powers are those which are common to all *Members*.

ARTICLE VII
MEMBERS' POWERS AND RESPONSIBILITIES

A. POWERS

The *Members* shall have the following powers:

1. To approve the *Agreement*;
2. To appoint a *Representative* and *Alternate* to the *Board of Directors*; and
3. To decide if and when the *Agreement* should be terminated.

B. RESPONSIBILITIES

The *Members* shall have the following responsibilities:

1. To cooperate fully with *ERMA* in determining the cause of losses and in the settlement of claims, as defined in the *Memorandum of Coverage*;
2. To comply with the requirements of all *ERMA* training and policy, practice and procedure requirements;
3. To pay *Deposit Premiums* and any adjustments or *Assessments* thereto promptly to *ERMA* when due;
4. To provide *ERMA* with such statistical loss experience data and other information as may be necessary for *ERMA* to carry out the purposes of this *Agreement*;
5. To cooperate with and assist *ERMA* and any insurer or reinsurer, claims adjuster, claims auditor, or legal counsel retained by *ERMA* in all matters relating to this

Agreement and to comply with the Bylaws and all policies and procedures adopted by the *Board* or Executive Committee; and

6. To abide by all decisions of the *Board* or Executive Committee.

ARTICLE VIII

BOARD OF DIRECTORS

There shall be a *Board of Directors* to govern the affairs of *ERMA*. *ERMA's Board* shall be comprised of a *Representative* from each *Member*. Said *Representative*, or *Alternate*, shall have authority to bind the *Member* on all matters pertaining to this *Agreement*.

The powers of the *Board*, unless otherwise delegated pursuant to the Bylaws, shall be all of the powers of *ERMA* not specifically reserved to the *Members* by this *Agreement* and shall include, but not be limited to, Article VI of this *Agreement*.

ARTICLE IX

EXECUTIVE COMMITTEE

The *Board* may create an Executive Committee comprised of members of the *Board* and delegate one or more of its powers to the Executive Committee except those powers not delegable. An appointment to the Executive Committee, if any, is by an election of the *Board of Directors* as addressed in the Bylaws.

ARTICLE X

ELECTION, APPOINTMENT AND DUTIES OF OFFICERS

The election, appointment and duties of officers shall be as set forth in the Bylaws.

ARTICLE XI
MEETINGS AND RECORDS

A. BOARD MEETINGS

The *Board* shall hold at least one regular meeting each fiscal year as defined in Article XII of this *Agreement*. The *Board* shall fix the date, hour and place at which each regular meeting is to be held in accordance with the Bylaws. Special meetings may be called and noticed in accordance with the Bylaws. Written notice of such special meetings shall be delivered to each representative of the *Board* at least twenty-four hours before such meeting.

Each meeting of the *Board*, including, without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the Ralph M. Brown Act (Section 54950, et. seq. of the Government Code).

B. RECORDS

The Secretary shall keep or have kept minutes of all regular, adjourned regular and special meetings of the *Board*. As soon as possible after each meeting, the Secretary shall forward a copy of the minutes to each representative of the *Board*.

ARTICLE XII
BYLAWS AND ADMINISTRATIVE POLICIES AND PROCEDURES

The *Board* or Executive Committee shall through resolution, adopt, rescind or amend Bylaws and administrative policies and procedures consistent with applicable law and this *Agreement* to govern the day-to-day operations of *ERMA*. Each representative and alternate shall receive a copy of any Bylaws, *Master Program Document*, and administrative policies and procedures developed under this Article.

The Secretary shall promptly send to each representative and alternate each Bylaw amendment, *Master Program Document* change, and administrative policy and procedure change after its adoption by the *Board* or Executive Committee.

ARTICLE XIII

FISCAL YEARS

Fiscal years of *ERMA* shall begin on July 1 and end on June 30.

ARTICLE XIV

BUDGET

The *Board* or Executive Committee shall adopt an annual budget prior to the beginning of each *Program Year*.

ARTICLE XV

FINANCIAL AUDITS

The *Board of Directors* or Executive Committee shall cause a financial audit as set forth in the Bylaws. Such financial audit shall be filed as a public record with each of the *Members* and the State Controller as required by law. All costs of such financial audit shall be paid by *ERMA* and shall be charged against the *Members* in the same manner as other administrative costs.

ARTICLE XVI

ESTABLISHMENT AND ADMINISTRATION OF FUNDS

ERMA shall be responsible for the strict accountability of all funds and reports of all receipts and disbursements. It will comply with all provisions of law relating to the subject, particularly Section 6505 of the California Government Code.

All of the monies of *ERMA* may be invested in common. However, each *Program Year* shall be accounted for separately on a full accrual basis.

The Treasurer shall receive, invest and disburse funds only in accordance with the guidelines and procedures established by the *Board* or Executive Committee in its adopted investment policy which shall be in conformity with applicable law.

ARTICLE XVII
DEPOSIT PREMIUM

The *Deposit Premium* for each *Member* shall be calculated and paid as stated in the Bylaws and *Master Program Document*.

ARTICLE XVIII
ASSESSMENTS AND DIVIDENDS

Assessments and dividends for each *Member* shall be calculated as provided for in the Bylaws and the *Master Program Document*.

ARTICLE XIX
COVERAGE PROGRAMS

The *Board* or Executive Committee may adopt such *Coverage Programs* as it deems necessary to further the goals of its *Members*. All *Coverage Programs* shall be defined by a *Memorandum(s) of Coverage*; insurance policy(ies), or document(s) with a copy provided to each *Member*.

ARTICLE XX
NEW MEMBERS

Admission to *ERMA* requires approval of two-thirds of the *Board* or Executive Committee and is conditioned upon the applicant executing the *Agreement*. Membership shall become effective upon the date established by the *Board* or Executive Committee. Prospective *Members* may apply for participation in *ERMA* as provided for in the Bylaws and *Master Program Document*.

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.

ARTICLE XXII

EXPULSION

ERMA may expel any *Member*, with or without cause, as a participant in any *Coverage Program* or as a *Member* of *ERMA* by a two-thirds vote of the *Board* or Executive Committee.

ARTICLE XXIII

EFFECT OF WITHDRAWAL OR EXPULSION

The withdrawal or expulsion of any *Member* after the inception of its participation in any *Coverage Program* shall not terminate its responsibility to:

- A. Cooperate fully with *ERMA* in determining the cause of the losses and in the defense or settlement of claims, as defined in the *Memorandum of Coverage*;
- B. Pay any *Assessments* determined by the *Board* or Executive Committee to be due and payable for each *Program Year* in which it participated, as well as *Assessments* for continuing required services in subsequent years until all *Program Years* in which the *Member* participated have been closed;
- C. Provide *ERMA* with such statistical and loss experience data and other information as may be necessary for *ERMA* to carry out the purposes of this *Agreement*; and
- D. Cooperate with and assist *ERMA*, any insurer, claims adjuster or legal counsel retained by *ERMA*, in all matters relating to this *Agreement*.

ARTICLE XXIV
TERMINATION AND DISTRIBUTION

This *Agreement* may be terminated any time during the first three years by the written consent of all *Members*, and thereafter by the written consent of two-thirds of the *Members*. However, this *Agreement* and *ERMA* shall continue to exist for the purpose of disposing of all claims, distributing assets and all other functions necessary to conclude the affairs of *ERMA*.

Upon termination of this *Agreement*, all assets of *ERMA* shall be distributed only among the *Members* that have been participants in the *Coverage Programs*, including any of those *Members* which previously withdrew pursuant to Articles XXI and XXII of this *Agreement*, in accordance with and proportionate to their *Deposit Premiums* and *Assessments* paid during the term of this *Agreement*. The *Board* or Executive Committee shall determine such distribution within six months after the last pending claim or loss covered by this *Agreement* has been finally resolved and there is a reasonable expectation that no new claims will be filed.

The *Board* is vested with all powers of *ERMA* for the purpose of concluding and dissolving the business affairs of *ERMA*. These powers shall include the power to require *Members*, including those which were *Coverage Program* participants at the time the claim arose or at the time the loss was incurred, to pay their share of any *Assessments* deemed necessary by the *Board* or Executive Committee for final disposition of all claims and losses covered by this *Agreement* for any *Program Year*.

ARTICLE XXV
NOTICES

Notices to *Members* under this *Agreement* shall be sufficient if mailed to their respective addresses on file with *ERMA*. Notices to *ERMA* shall be sufficient if mailed to the address of *ERMA* as adopted by the *Board* or Executive Committee.

ARTICLE XXVI
PROHIBITION AGAINST ASSIGNMENT

No *Member* may assign any right, claim or interest it may have under this *Agreement*, and no creditor, assignee or third party beneficiary of any *Member* shall have any right, claim or title to any part, interest, funds, *Deposit Premium* or asset of *ERMA*.

ARTICLE XXVII
AMENDMENTS

This *Agreement* may be amended by written approval of two-thirds (2/3rds) of the *Representatives*. Upon signature of any amendment by two-thirds (2/3rds) of the *Representatives*, any *Member* failing or refusing to abide by such amendment may be expelled in accordance with the provisions of Article XXII.

ARTICLE XXVIII
SEVERABILITY

Should any portion, term, condition or provision of this *Agreement* 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 XXIX
HOLD HARMLESS AND INDEMNIFICATION

Section 895.2 of the California Government Code imposes certain tort liability jointly upon entities solely by reason of such entities being parties to an agreement as defined in Section 895 of said Code. Therefore, the *Members* hereto, as between themselves, pursuant to the authorization contained in Sections 895.4 and 895.6 of the California Government Code, each assumes the full

liability imposed upon it or any of its officers, agents, or employees by law for injuries caused by a negligent or wrongful act or omission occurring in the performance of this *Agreement* to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve this purpose, each *Member* indemnifies and holds harmless all other *Members* for any loss, cost, or expense that may be imposed upon such other *Member* when solely by virtue of Section 895.2 of the California Code. No *Member* shall be jointly and severally liable for any debts or obligations of *ERMA* or any other *Member*.

ARTICLE XXX
AGREEMENT COMPLETE

The foregoing constitutes the full and complete agreement of the parties. There are no oral understandings or agreements not set forth in writing herein.

ARTICLE XXXI
EXECUTION OF COUNTERPARTS

This *Agreement* may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same *Agreement*.

IN WITNESS WHEREOF, the parties hereto have executed the Joint Powers *Agreement* for the pooling of self-insurance as of the _____ day of _____, _____.

Joint Powers Authority or Individual Entity:

By: _____

President or Duly Authorized Official

By: _____

Secretary or Clerk

APPENDIX A

MEMBER ENTITIES

1. Bay Cities Joint Powers Insurance Authority
2. California Transit Indemnity Pool
3. Central San Joaquin Valley Risk Management Authority
4. Exclusive Risk Management Authority of California
5. Monterey Bay Area Self Insurance Authority
6. Municipal Pooling Authority of Northern California
7. Pooled Liability Assurances Network
8. Public Agency Risk Sharing Authority of California
9. Small Cities Organized Risk Effort
10. Vector Control Joint Powers Agency
11. Housing Authority of the County of Contra Costa
12. Oakland Housing Authority