



**EMPLOYMENT RISK MANAGEMENT AUTHORITY (ERMA)
COVERAGE COMMITTEE MEETING
AGENDA**

**Thursday, January 21, 2021
1:00 p.m.**

Webex

Dial-in Number: (415) 655-0001

Meeting Number: 180 731 1820

[Meeting Link](#)

All portions of this meeting will be conducted by teleconferencing in accordance with the State of California Executive Order N-29-20.

Members of the public may observe and listen to the meeting telephonically. No physical location will be available from which members of the public may observe the meeting and offer public comment. Public comments may be submitted in advance of the meeting to mona.hedin@sedgwick.com no later than 5:00 p.m. on Wednesday, January 20, 2021. If a member of the public would like to address the Committee during the meeting, the person may email Ms. Hedin during the meeting and, if timely received, Ms. Hedin will read or summarize the email to the Committee members.

In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation to participate in this meeting, please contact Ms. Hedin. Requests must be made as early as possible, and preferably 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 Board less than 72 hours prior to a regular meeting will be available for public inspection. Please contact Ms. Hedin at (916) 290-4645 or mona.hedin@sedgwick.com.

- Page**
- 1. CALL TO ORDER; ROLL CALL**
 - 2. APPROVAL OF AGENDA AS POSTED (OR AMENDED)**
 - 3. PUBLIC COMMENTS** - The Public may submit any questions in advance of the meeting by contacting Mona Hedin at: mona.hedin@sedgwick.com. This time is reserved for members of the public to address the Board relative to matters of the ERMA not on the agenda. No action may be taken on non-agenda items unless authorized by law.

5. CONSENT CALENDAR

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

- 4 *A. Minutes of the January 8, 2020 Coverage Committee Meeting
 Recommendation: Approval of the Consent Calendar.

6. COVERAGE MATTERS

- 7 *A. Discussion and Review of Proposed Changes to Resolution Requiring Members to Provide Proof of Compliance with Training Mandated by State Law
 Recommendation: Staff recommends the Committee review and consider necessary changes to the Resolution Requiring Members to Provide Proof of Compliance with Training Mandated by State Law.

- 12 *B. Review of Proposed Revisions to the Memorandum of Coverage for the 2020/21 Program Year, Effective January 1, 2021
 Recommendation: Staff recommends the Committee review the proposed amendments to the Memorandum of Coverage for the 2020/21 Program Year, effective January 1, 2021, and provide direction.

- 46 C. Consideration of Additional Self-Insured Retention Option
 Recommendation: Staff recommends the Committee provide direction.

- 47 *D. Discussion Regarding Personnel Policies and Procedures Compliance
 Recommendation: Staff recommends the Committee provide direction.

- 52 *E. Discussion and Review of Underwriting Guidelines
 Recommendation: Staff recommends the Committee review ERMA's Underwriting Guidelines and provide direction.

7. CLOSING COMMENTS

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

- A. Committee
- B. Staff

8. ADJOURNMENT

* Reference materials enclosed with staff report.

CONSENT CALENDAR

SUBJECT: Consent Calendar

BACKGROUND AND STATUS:

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

RECOMMENDATION:

Approval of the Consent Calendar

REFERENCE MATERIAL ATTACHED:

- Minutes of the January 8, 2020 Coverage Committee Meeting

EMPLOYMENT RISK MANAGEMENT AUTHORITY (ERMA)

**MINUTES OF THE COVERAGE COMMITTEE
MEETING JANUARY 8, 2020**

An ERMA Coverage Committee meeting was held on January 8, 2020, via teleconference.

COMMITTEE MEMBERS PRESENT: John Gillison, President, PARSAC
Truc Dever, Vice President, VCJPA
Stuart Schillinger, Treasurer, VCJPA
Scott Ellerbrock, President, PERMA

COMMITTEE MEMBERS ABSENT: None

OTHERS PRESENT: Jennifer Jobe, Executive Director
Kathy Maylin, Litigation Manager
Mona Hedin, Analyst
Doug Alliston, Board Counsel

1. CALL TO ORDER/ROLL CALL

The January 8, 2020, ERMA Coverage Committee meeting was called to order at 3:00 p.m. by President John Gillison. Roll call was taken and it was determined a quorum was present.

2. APPROVAL OF AGENDA AS POSTED (OR AMENDED)

Truc Dever moved to approve the agenda as posted. Seconded by Scott Ellerbrock. The motion passed unanimously.

3. PUBLIC COMMENTS

None

4. CONSENT CALENDAR

Truc Dever moved to approve the Minutes – Meeting of January 14, 2019. Seconded by Scott Ellerbrock. The motion passed unanimously.

5. COVERAGE MATTERS

A. Review of Proposed Revisions to the Memorandum of Coverage for the 2020/21 Program Year, Effective July 1, 2020

Kathy Maylin, Litigation Manager, stated that as a result of on-going member ambiguity regarding the definition of a “Claim” and the process for reporting, staff proposed clarifying revisions to the Memorandum of Coverage (MOC) for the 2020/21 Program Year.

Mr. Alliston reviewed the proposed revisions to the MOC as follows:

Revisions to the definition of “Claim:”

1. Section II – Definitions

The current definition of “Claim” includes complex language at times, resulting in confusion with ERMA’s claim reporting process.

Mr. Alliston recommended removing the following language from the definition, “‘*Claim*’ means: (a) a written demand or notice which is made or brought by an *Employee*, or an oral demand or notice by an *Employee* which is memorialized by the *Covered Party* in writing within fifteen (15) days of the oral demand or notice, and (b) seeks or alleges *Damages* or alleges other injury, harm, or invasion of rights, and (c) which contains an allegation that a *Wrongful Employment Practice* or a series of *Wrongful Employment Practices* has been committed during the *Coverage Period*. *Claim* includes a civil action, an administrative proceeding or charge commenced before the Equal Employment Opportunity Commission or similar state or other agency having jurisdiction over the *Covered Party*, or an alternative dispute resolution proceeding, or action brought by a person or entity acting on behalf of an *Employee* of the *Covered Party*.”

Discussion ensued regarding member agencies memorializing written complaints in an effort to ensure ERMA’s involvement as early as possible. Resources to leverage the need for early involvement were discussed, including the incorporation of a review of ERMA’s reporting requirements as a part of AB 1825 & SB 1343 trainings, reminders to member agencies via the bi-annual membership letter and leveraging primary JPA Managers as disseminators of information to their underlying members.

Mr. Alliston further recommended amendments to language defining the grant of coverage in order to simplify the definition and clarify the coverage period referenced.

Revisions to the grant of coverage:

1. Section 1 – Coverage

Mr. Alliston recommended amendments to the definition, “The *Authority* will pay *Ultimate Net Loss*, less the *Retained Limit*, up to the *Limit of Coverage* on behalf of the *Covered Party* due to a *Claim* against the *Covered Party* because of a *Wrongful Employment Practice*, to which this Memorandum applies, caused by an *Occurrence*, except as otherwise excluded.”

Truc Dever moved to approve the recommended revisions to the Memorandum of Coverage for the 2020/21 Program Year, effective July 1, 2020. Seconded by Scott Ellerbrock. The motion passed unanimously.

B. Review of Proposed Revisions to the Master Program Document for the 2020/21 Program Year, Effective July 1, 2020

Ms. Maylin spoke to the noted inconsistency in the Master Program Document (MPD) regarding the Litigation Manager's authority to accept as timely any claim reported after 30 days.

Revisions to the Litigation Manager's discretionary authority to accept/deny claims:

1. Section VII - Conditions

Mr. Alliston recommended the addition of the following language to the MPD: "The Litigation Manager shall have discretion to accept as timely any *Claim* reported after 30 days except for any of the following: notice from the U.S. Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing or any other state or federal Government agency to which an *Employee* has made a claim; a Government claim; or a civil lawsuit."

Ms. Jobe stated minor updates were incorporated as part of the annual review and updates for the 2020/21 Program Year. Ms. Jobe advised the recommended amendments would be provided to the Board for review at the upcoming February meeting, to allow for any further necessary amendments prior to the 2020/21 Program Year.

Truc Dever moved to approve the recommended revisions to the Master Program Document for the 2020/21 Program Year, effective July 1, 2020. Seconded by Scott Ellerbrock. The motion passed unanimously.

6. CLOSING COMMENTS

A. Coverage Committee

None

B. Staff

None

7. ADJOURNMENT

The January 8, 2020, ERMA Coverage Committee meeting adjourned at 3:26 p.m. by general consent.

Mona Hedin, Board Secretary

COVERAGE MATTERS

SUBJECT: Discussion and Review of Proposed Changes to Resolution Requiring Members to Provide Proof of Compliance with Training Mandated by State Law

BACKGROUND AND STATUS:

At the February 2020 Board meeting, Resolution No. 2020-1, Requiring Members to Provide Proof of Compliance with Training Mandated by State Law (Resolution) was approved. The Resolution, adopted in its original form as Resolution No. 5-2005 on April 24, 2006, has been modified multiple times due to coverage and legislative changes.

In a recent review of the current Resolution, it was noted two sections require Committee review and discussion.

1) Page 2 of the Resolution states:

“For any Claim, as such term is defined in ERMA’s Memorandum of Coverage, that is submitted to ERMA by an underlying member which relates to the subject matter of California Government Code §12950.1, each underlying member is required to provide ERMA with documentation evidencing they have substantially complied with as the training requirements mandated by said code section. Substantial compliance is defined as having 90% of all employees and elected officials trained in compliance with §12950.1 as of the date of occurrence of the Claim.”

References to “substantial compliance” are contained within the current Resolution, the Memorandum of Coverage, member communication utilized to establish training compliance upon receipt of certain claim types, and the online training self-certification survey tool. Staff recommends the Committee review and consider any necessary updates related to the definition of “substantial compliance”.

2) Page 2 of the Resolution also states:

“Any underlying member that fails to comply with the mandated sexual harassment training or fails to provide ERMA with documentation evidencing compliance will have its retained limit increased by 100% for the submitted claim.”

ERMA's 205 member agencies currently retain limits as follows:

Self-Insured Retention (SIR)	# of Member Agencies
\$25,000	114
\$50,000	51
\$75,000	6
\$100,000	17
\$250,000	5
\$500,000	12

Pursuant to the language noted above, should it be determined a member is out of compliance or fails to provide evidence of such, they are subject to a 100% SIR increase for the submitted claim. For many, such an increase may result in financial penalties untenable to the member agency.

Staff recommends a penalty for failure to comply with training requirements remain in place, however, proposes a structure that mirrors the penalty applied for late reporting of claims. This penalty structure is as follows:

SIR	Penalty	% of Penalty to SIR
\$25,000	\$6,250	25%
\$50,000	\$12,500	25%
\$75,000	\$18,750	25%
\$100,000	\$25,000	25%
\$250,000	\$37,500	15%
\$500,000	\$50,000	10%

RECOMMENDATION:

Staff recommends the Committee review and consider necessary changes to the Resolution Requiring Members to Provide Proof of Compliance with Training Mandated by State Law.

REFERENCE MATERIAL ATTACHED:

- Resolution 2021-3, Requiring Members to Provide Proof of Compliance with Training Mandated by State Law

DRAFT RESOLUTION NO. 2021-~~3~~X

**RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EMPLOYMENT RISK MANAGEMENT AUTHORITY REQUIRING
MEMBERS TO PROVIDE PROOF OF COMPLIANCE WITH TRAINING
MANDATED BY STATE LAW**

WHEREAS, the Employment Risk Management Authority, hereinafter ERMA, is a Joint Powers Authority organized and existing in accordance with the laws of the State of California;

WHEREAS, one of the functions of ERMA is to operate a “Pooled Wrongful Employment Practices” “risk sharing” program;

WHEREAS, it is in the best interests of the ERMA members to ensure that all underlying members comply with the minimum training requirements mandated by state law;

WHEREAS, the Board previously adopted Resolution No. ~~2019-3~~2020-01 to ensure that all ERMA members complied with sexual harassment training mandated by state law (Government Code § 12950.1) and to establish a compliance program in which underlying members would be required to establish proof of compliance with such training to avoid penalties for noncompliance; and

WHEREAS, the Legislature has addressed conduct other than sexual harassment in Government Code § 12950.1, and this Resolution reflecting such scope is therefore appropriate.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors as follows: This

Resolution ~~2020-1-X3~~ supersedes Resolution ~~2019-20-31~~.

Senate Bill 778 extends the deadline from January 1, 2020 to January 1, 2021 for all employers with five or more employees to provide: 1) At least two hours of sexual harassment prevention training to all supervisory employees and elected officials and 2) At least one hour of sexual harassment prevention training to all non-supervisory employees. New employees should be trained within six months of appointment to a supervisory position. Thereafter, employees must be provided with refresher training once every two years. Temporary and/or seasonal employees must receive harassment prevention training by January 1, 2021.

Such training is required to address sexual harassment as well as harassment based on gender identity, gender expression, and sexual orientation; “abusive conduct” as defined; and more generally address unlawful discrimination, harassment and retaliation.

In an effort to ensure mandated training requirements are met, ERMA staff will monitor participation of live and online training for ERMA members via an established self-certification process, beginning January 1, 2021.

For any *Claim*, as such term is defined in ERMA’s Memorandum of Coverage, that is submitted to ERMA by an underlying member which relates to the subject matter of California Government Code §12950.1, each underlying member is required to provide ERMA with documentation evidencing they have **substantially complied with as the training requirements mandated by said code section**. Substantial compliance is defined as having 90% of all employees and elected officials trained in compliance with §12950.1 as of the date of occurrence of the *Claim*.

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At the time the Claim is submitted, and at the request of an ERMA representative, the underlying member shall within 30 days provide an attestation that the following occurred:

1. The underlying member is in compliance with the training and education requirements set forth in California Government Code §12950.1 and the regulations of the Fair Employment and Housing Commission relating thereto;
2. The underlying member documented the date of the training for each employee;
3. The underlying member retained a description of the course (including content and duration) and the course materials;
4. The underlying member retained a brief biography on the course trainer; and
5. The underlying member retained a copy of the participant sign-in sheets, certificates of completion, or other proof of attendance.

Any underlying member that fails to comply with the mandated sexual harassment training or that fails to provide ERMA with documentation evidencing compliance **will have its retained limit increased as follows for the submitted Claim:**

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<u>SIR</u>	<u>Penalty</u>	<u>Percentage of Penalty to SIR</u>
<u>\$25,000</u>	<u>\$6,250</u>	<u>25%</u>
<u>\$50,000</u>	<u>\$12,500</u>	<u>25%</u>
<u>\$75,000</u>	<u>\$18,750</u>	<u>25%</u>
<u>\$100,000</u>	<u>\$25,000</u>	<u>25%</u>
<u>\$250,000</u>	<u>\$37,500</u>	<u>15%</u>
<u>\$500,000</u>	<u>\$50,000</u>	<u>10%</u>

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~~will have its retained limit increased by 100% for the submitted Claim.~~ The Board of Directors will have discretion to consider lack of compliance as a factor in determining whether a member should be subject to a Risk Assessment.

This Resolution was adopted by the Board of Directors at a regular meeting held on ~~February 711, 2020~~ **in Santa Cruz, California via teleconference**, by the following vote:

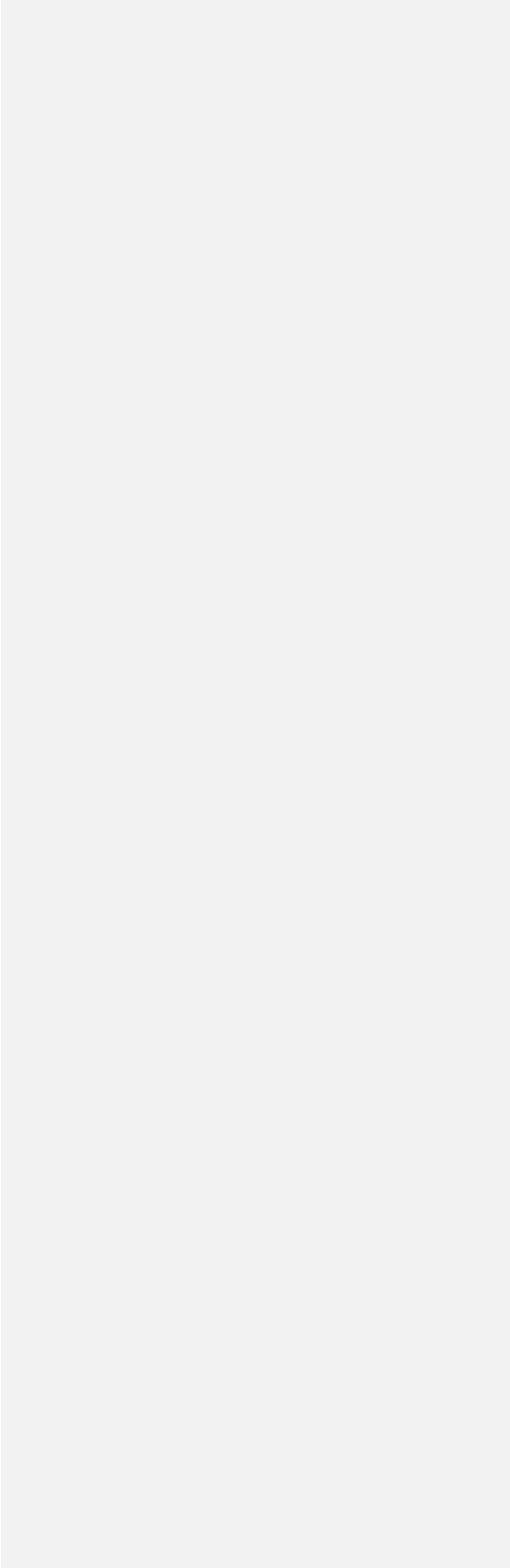
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AYES _____
 NOES _____
 ABSTAIN _____
 ABSENT _____

ATTEST:

PRESIDENT

BOARD SECRETARY



COVERAGE MATTERS

SUBJECT: Review of Proposed Revisions to the Memorandum of Coverage for the 2020/21 Program Year, Effective January 1, 2021

BACKGROUND AND STATUS:

As noted in a previous agenda item, the Resolution Requiring Members to Provide Proof of Compliance with Training Mandated by State Law is referenced in the Memorandum of Coverage (MOC), Section VII, Conditions, Article 1 (F):

“If the Covered Party is not in substantial compliance with the requirements of Government Code §12950.1 (AB 1825) during the Coverage Period for an Occurrence related to that code section, the Covered Party’s Retained Limit shall be doubled for such claim. Proof of substantial compliance shall be provided at the request of the Authority and in the form set forth in Resolution No. 2010-2, or any superseding Resolution, which requires documentation to confirm compliance with the sexual harassment training mandated by State law.”

Though mid-year coverage changes are not typically favored, should the Committee determine the Resolution Requiring Members to Provide Proof of Compliance with Training Mandated by State Law is revised in order to limit the effect of a 100% increase of the member’s self-insured retention (SIR), it becomes necessary to amend the MOC, effective January 1, 2021.

Additionally, staff recommends the MOC is amended to extend the existing penalty structure for late reporting of claims to non-compliance with state-mandated training and replace the current application of a 100% increase of the member’s SIR.

RECOMMENDATION:

Staff recommends the Committee review the proposed amendments to the Memorandum of Coverage for the 2020/21 Program Year, effective January 1, 2021, and provide direction.

REFERENCE MATERIAL ATTACHED:

- Memorandum of Coverage for the 2020/21 Program Year, Effective January 1, 2021 in redline/strikeout text

EMPLOYMENT RISK MANAGEMENT AUTHORITY

(ERMA)

MEMORANDUM OF COVERAGE

FOR THE 2020/21 PROGRAM YEAR

EFFECTIVE ~~JULY 1, 2020~~ JANUARY 1,

2021

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FORM NUMBER ERMA 2020-1EPL

MEMORANDUM OF COVERAGE FOR THE
EMPLOYMENT RISK MANAGEMENT AUTHORITY (ERMA)

In consideration of the payment of the deposit premium, the *Authority* agrees with the *Members* as follows:

SECTION I - COVERAGE

The *Authority* will pay *Ultimate Net Loss*, less the *Retained Limit*, up to the *Limit of Coverage* on behalf of the *Covered Party* due to a *Claim* against the *Covered Party* because of a *Wrongful Employment Practice* to which this Memorandum applies, caused by an *Occurrence*, except as otherwise excluded.

This Memorandum of Coverage does not provide insurance, but instead provides for pooled risk sharing. This Memorandum is a negotiated agreement amongst the *Covered Parties* of the *Authority* and none of the parties to the Memorandum is entitled to rely on any contract interpretation principles which require interpretation of ambiguous language against the drafter of such Memorandum. This Memorandum shall be applied according to the principles of contract law, giving full effect to the intent of the *Covered Parties* of the *Authority*, acting through the Board of Directors in adopting this Memorandum of Coverage. Since the *Authority* is not an insurer, it has no obligation to issue reservation of rights letters, and failure to provide notice to a *Covered Party* of any coverage issue or dispute shall not operate to waive any of the provisions of this Memorandum. Since this Memorandum does not provide insurance, neither the *Authority* nor any *Covered Parties* shall be liable for or subject to any legal action or proceeding as to any claim alleging breach of the implied covenant of good faith and fair dealing with respect to any dispute between the *Authority* and any *Covered Parties* that may arise under this Memorandum.

SECTION II - DEFINITIONS

- 1 "*Authority*" means the Employment Risk Management Authority.
- 2 "*Claim*" means oral or written notice to the *Covered Party* that an *Employee* alleges a *Wrongful Employment Practice*.

Claim does not include a *Union Grievance*, or any type of criminal proceeding, or any claim arising under the FLSA or any California Wage Orders or any similar federal or state law. *Claim* does not include a dispute arising out of a contract for employment between the *Covered Party* and any individual or *Employee*, including but not limited to any dispute regarding the validity or enforceability of such contract.

Claim does not include an internal administrative or disciplinary proceeding pursuant to the terms and conditions of employment.

A *Claim* shall be deemed to be made on the earliest date such notice is received by a *Covered Party*.

3 "Coverage Period" means that term prescribed for coverage by the *Authority* as set forth in the
Declarations page.

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4 "Covered Party" means:

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- (A) The *Member* and any additional entities named in the Declarations page.
- (B) Any person who is an *Employee* of a *Covered Party* identified in Section (A) herein, whether or not compensated, while acting in an official capacity for or on behalf of such *Covered Party*, including while acting on any outside board at the direction of such *Covered Party*.

Covered Party shall not include any person, whether or not compensated, who is not acting in the course and scope of his or her employment or whose conduct, as a matter of law, is not within the course and scope of his or her employment by the *Covered Party* at the time of the act or acts alleged in a *Claim*.

- (C) All entities named in Endorsement #2, and any officer, director or employee thereof while acting in an official capacity for or on behalf of such entity and in the course and scope of his or her duties. Except for those expressly identified in Endorsement #2, no other person, organization, or entity shall be deemed to be a "Covered Party" under Endorsement #2.

~~(D)~~ Notwithstanding sections (B) and (C) above, the defense and indemnity coverage afforded by this Memorandum to a past or present *Employee* of a *Covered Party* is not broader than the *Covered Party's* duty to defend and indemnify its *Employee*, pursuant to California Government Code Section 815, 815.3, 825 to 825.6, 995 to 996.6, inclusive, and any amendments thereof. If the *Covered Party* which employs the *Employee* is not obligated under the California Government Code to provide a defense or to provide indemnity for a *Claim*, or if said *Covered Party* refuses to provide such defense and/or indemnity to said *Employee*, then this Memorandum shall not provide any such defense or indemnity coverage to said *Employee*. All immunities, defenses, rights, and privileges afforded to a *Covered Party* under California Government Code Section 815, 815.3, 825 to 825.6, 995 to 996.6, inclusive, and any amendments thereof, shall

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be afforded to the *Authority* to bar any defense or indemnity coverage under this Memorandum to that *Covered Party's Employee*.

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- 5 "Damages" means compensation in money which a *Covered Party* is legally obligated to pay as a result of a *Claim*. *Damages* include: (1) attorney fees not based on contract, awarded against the *Covered Party*, (2) interest on judgments, or (3) costs for which the *Covered Party* is liable either by adjudication, or by compromise with the written consent of the *Authority*, if the fees, interest, or costs arise from an *Occurrence* to which this coverage applies.

Damages with respect to *Wrongful Employment Practice* shall not include those sums owed by a *Covered Party* as contract damages, prospective salary, wages, or benefits, any salary, wage or benefits resulting from an order that a *Covered Party* hire an applicant or from promotion or reinstatement, or any damages owing under an express contract of employment or an express obligation to make severance payments in the event of termination of employment.

Damages with respect to *Wrongful Employment Practice* also shall not include amounts awarded under a labor grievance or arbitration pursuant to a collective bargaining agreement, nor sums paid pursuant to any judgment or agreement, whether injunctive or otherwise, to undertake actions to correct past discriminatory or unlawful conduct or to establish practices or procedures designed to eliminate or prevent future discriminatory or other unlawful conduct, or any non-monetary relief.

- 6 "Defense Costs" means all fees and expenses incurred by any *Covered Party*, caused by and relating to the adjustment, investigation, defense, or litigation of a *Claim* to which this coverage applies, including attorney's fees, court costs, interest on judgments accruing after entry of judgment, and the time and travel expenses of the Litigation Manager for attendance at trials, mediations, arbitrations and settlement conferences. *Defense Costs* shall not include attorney fees or costs awarded to a prevailing plaintiff against the *Covered Party*.

Defense Costs shall not include the office expenses, salaries of *Employees*, or expenses of the *Covered Party* or the *Authority*. *Defense Costs* shall not include investigation costs incurred by investigators or adjusting expenses that were not approved by ERMA prior to the costs being incurred. *Defense Costs* are included within, and are not in addition to, the applicable *Limit of Coverage*.

Defense Costs shall not include any fee or expense relating to coverage issues or disputes between the *Authority* and any *Covered Party*.

- 7 "Discrimination" means termination of the employment relationship, a demotion, a failure or refusal to hire or promote, denial of an employment benefit, or the taking of any adverse or differential employment action because of race, color, creed, religion, age, sex, disability, pregnancy, sexual orientation, national origin, AIDS, or other protected category or characteristic established pursuant to any applicable federal, state, or local statute or ordinance.

8 “Employee” means any person whose labor or services is engaged and directed by a *Covered Party*, whether past, present or future, including a volunteer, official, or applicant for employment. This includes part-time, seasonal, and temporary labor or services, as well as any person employed in a supervisory, managerial, or confidential position. *Employee* shall not include leased employees, independent contractors or subcontractors, agents, or servants of any *Covered Party*, unless the *Covered Party* has the right to and does control and direct the details of their work rather than the result of that work. *Employee* also shall not include the spouse, child, unborn fetus, parent, brother, or sister of the *Employee*. *Employee* shall not include any person performing labor or services, either voluntarily or involuntarily, while incarcerated in any state or local correctional or penal institution or facility of any nature, or who performs labor or services, either voluntarily or involuntarily, as a condition of or in satisfaction of any penal sentence.

The exclusion of independent contractors or subcontractors from the definition of *Employee* shall not apply to a *Claim* for harassment specifically authorized under Cal. Gov. Code 12940 (j)(1) and (5).

9 “Harassment” means:

(A) Unwelcome sexual advances, requests for sexual favors, or other verbal, visual or physical conduct of a sexual nature, including those which:

- (1) are made a condition of employment with the *Covered Party*;
- (2) are used as a basis for employment decisions by the *Covered Party*; or
- (3) create a work environment that interferes with performance or creates an intimidating, hostile or offensive working environment; or

(B) Workplace conduct (i.e. *Harassment* of a non-sexual nature) committed in violation of law or because of any protected category or characteristic which creates a work environment that interferes with performance, or creates an intimidating, hostile, or offensive working environment.

10 “Limit of Coverage” shall be the amount of coverage stated in the Declarations Page, or sublimits as stated therein for each *Covered Party* per *Occurrence*, subject to any lower sublimit stated in this Memorandum. The *Limit of Coverage* shall include the *Covered Party’s Retained Limit*. For each *Occurrence*, there shall be only one *Limit of Coverage* regardless of the number of claimants or *Covered Parties* against whom a *Claim* is made, or the number of *Coverage Periods* through which the *Occurrence* continues. In the event that a structured settlement, whether purchased from or through a third-party, or paid directly by the *Covered Party* in installments, is utilized in the resolution of a *Claim* or suit, the *Authority* will pay only up to the amount stated in the Declarations in present value of the *Claim*, as determined on the date of settlement, regardless of whether the full value of the settlement exceeds the amount stated in the Declarations.

11 “Member” means 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.

12 “Occurrence” means act or omission or series of related acts or omissions by a *Covered Party* during the Coverage Period which results in a *Claim* for a *Wrongful Employment Practice*. All acts or omissions alleged by the same *Employee* in the same *Claim* shall be deemed to constitute one *Occurrence* that took place on the date of the first alleged act or omission.

Regardless of the number of *Covered Parties*, all *Claims* by all *Employees* arising from the same act or omission or series of related acts or omissions shall be deemed to be one *Occurrence* for the purpose of the Limit of Coverage, and that *Occurrence* shall be deemed to have taken place on the date of the first such act or omission alleged by the *Employee* or *Employees*.

13 “Retained Limit” means the amount of *Ultimate Net Loss*, identified in the applicable Declaration, which the *Covered Party* becomes liable to pay before the *Authority* is obligated to make payment.

For each *Occurrence*, there shall be only one *Retained Limit* regardless of the number of claimants or *Covered Parties* against whom a *Claim* is made, or *Coverage Periods* during which the *Occurrence* continues.

14 “Retaliation” means retaliatory treatment against an *Employee* of the *Covered Party* on account of such *Employee’s* exercise or attempted exercise of his or her rights under the law.

15 “Ultimate Net Loss” means the total of all *Defense Costs* incurred by the *Covered Parties* and all *Damages* for which the *Covered Parties* are liable either by adjudication or by compromise with the written consent of the *Authority*, arising from an *Occurrence* to which this coverage applies.

16 “Union Grievance” is limited to labor negotiations with respect to wages or working conditions, union organizing efforts, or unfair labor practice charges within the jurisdiction of the National Labor Relations Board or the Public Employment Relations Board.

17 “Workplace Tort” means any of the following acts alleged to have been committed in violation of law or because of any protected category or characteristic:

(A) Actual or constructive termination of an employment relationship in a manner which is alleged to have been against the law or wrongful, or in breach of an implied employment contract or breach of the covenant of good faith and fair dealing in the employment contract;

- (B) Allegations of negligent or wrongful evaluation, wrongful demotion, wrongful discipline, failure to promote, failure to grant tenure, or wrongful deprivation of career opportunity;
- (C) Allegations of misrepresentation or defamation made by an *Employee* which arise from an employment decision to hire, fire, promote or demote;
- (D) Allegations of infliction of emotional distress, mental injury, mental anguish, shock, sickness, disease or disability made by an *Employee* which arise from an employment decision to hire, fire, promote or demote;
- (E) Allegations of false imprisonment, detention, or malicious prosecution made by an *Employee* which arise from an employment decision to hire, fire, promote or demote;
- (F) Allegations of libel, slander, defamation of character, invasion of privacy made by an *Employee* which arise from an employment decision to hire, fire, promote or demote; or
- (G) Other allegations made by an *Employee* which arise from an employment decision to hire, fire, promote or demote.

Workplace Torts do not include *Damages* determined to be owing under a written contract of employment or obligation to make payments, including but not limited to severance payments, in the event of the termination of employment.

Workplace Torts shall not include any allegations other than those set forth above.

⊗ “Wrongful Employment Practice” means any actual or alleged *Wrongful Termination, Discrimination, Harassment, Retaliation, or Workplace Tort*.

⊗ “Wrongful Termination” means termination of an employment relationship in a manner which is alleged to have been committed in violation of law or because of any protected category or characteristic or in breach of an implied agreement to continue employment.

Wrongful Termination shall not include *Damages* determined to be owing under an express contract of employment or an express obligation to make payments in the event of the termination of employment.

SECTION III - DEFENSE AND SETTLEMENT

The *Authority* shall have no duty to assume charge of investigation or defense of any *Claim*. However, the *Authority* shall have the right to assume the control of the negotiation, investigation, defense, appeal, or settlement of any *Claim* the *Authority* determines, in its sole discretion, to have reasonable probability of resulting in an *Ultimate Net Loss* in excess of the applicable *Retained Limit*. The *Covered Parties* shall fully cooperate in all matters pertaining to such *Claim* or proceeding. Such cooperation shall include, but not be limited to, executing all documents necessary to effectuate a settlement. If the *Covered Party’s* lack of cooperation prevents

settlement of the claim for a reasonable amount, defined as the amount the *Authority* is willing to pay and the claimant is willing to accept, and increases the potential liability for *Damages* and continued *Defense Costs*, the *Covered Party* shall pay or shall reimburse the *Authority* for those *Defense Costs* incurred after the claim could have been settled, and for any *Damages* awarded or settlement agreed upon in excess of the amount for which the claim could have been settled, or, in the alternative, the *Authority* shall have the right to tender the claim back to the *Covered Party* and coverage shall cease.

If the *Authority* assumes the control of the handling of a *Claim*, the *Covered Parties* shall be obligated to pay at the discretion of the *Authority* any sum necessary for the defense and settlement of a *Claim*, or to satisfy liability imposed by law, up to the applicable *Retained Limit*.

No *Claim* shall be settled for an amount in excess of the *Retained Limit* without the prior written consent of the *Authority*, and the *Authority* shall not be required to contribute to any settlement to which it has not consented.

SECTION IV - ERMA'S LIMIT OF COVERAGE

Regardless of the number of (1) *Covered Parties* under this Memorandum, (2) persons or organizations who sustain injury or damage, (3) *Claims* made or suits brought, or (4) *Coverage Periods involved*, the *Authority's* liability is limited as follows:

With respect to coverage provided, the *Authority's* liability for any one *Occurrence* shall be limited to the *Ultimate Net Loss* which is in excess of the *Covered Party's Retained Limit*, but then only up to the sum set forth in the Declarations as the *Authority's Limit of Coverage* for any one *Occurrence*. In the event that a structured settlement, whether purchased from or through a third party, or paid directly by the *Covered Party* in installments, is utilized in the resolution of a *Claim* or suit, the *Authority* will pay only up to the amount stated in the Declarations in present value of the *Claim*, as determined on the date of settlement, regardless of whether the full value of the settlement exceeds the amount stated in the Declarations.

Nothing contained herein shall operate to increase the *Authority's Limit of Coverage* under this Memorandum.

SECTION V - COVERAGE PERIOD AND TERRITORY

This Memorandum applies to *Wrongful Employment Practice* that occurs anywhere in the world during the *Coverage Period* identified in the applicable Declaration.

SECTION VI - EXCLUSIONS

This Memorandum does not cover:

1. **Bodily Injury.** We do not cover *Claims*:
 - (A) for bodily injury, sickness, disease or death of any person; or
 - (B) brought by the person's domestic partner, spouse, child, parent, brother or sister as a result of such bodily injury, sickness, disease or death.

This does not apply to *Claims* for emotional distress, mental anguish or humiliation that arise from a *Wrongful Employment Practice*.
2. **Compliance with ADA Requirements.** We do not cover any costs or expenses incurred to make premises accessible to persons with disabilities as required by:
 - (A) the Americans with Disabilities Act of 1990;
 - (B) any similar federal, state or local law;
 - (C) any amendments to such laws; or
 - (D) any regulations promulgated under any such laws.
3. **Contractual Liability.** We do not cover the liability of others assumed by the *Covered Party* in a contract or agreement. This does not apply to liability that the *Covered Party* would have had in the absence of the contract or agreement.
4. **ERISA, COBRA WARN Act, and FLSA Liability.** We do not cover any liability imposed on the *Covered Party* under:
 - (A) the Employee Retirement Income Security Act of 1974;
 - (B) the Comprehensive Omnibus Budget Reconciliation Act;
 - (C) the Worker Adjustment and Retraining Notification Act;
 - (D) the Fair Labor Standards Act, including but not limited to any wage and hour or other claim arising under the FLSA or any California Wage Orders or any similar federal or state law;
 - (E) any similar federal, state or local laws;
 - (F) any amendments to such laws; or

(G) any regulations promulgated under any such laws.

5. **Fines, Multiplied Damages, or Non-Monetary Relief.** We do not cover:

(A) fines, taxes, penalties, or liquidated Damages;

(B) the multiplied portion of any Damage award that is subject to a multiplier;

(C) non-monetary relief; or

(D) any punitive damages or other uninsurable amounts.

6. **Intentional Conduct Done with Willful and Conscious Disregard.** We do not cover *Claims* for injury or *Damages* caused by intentional conduct done by the *Covered Party* with willful and conscious disregard of the rights or safety of others, or with malice. However, where the *Covered Party* did not authorize, ratify, participate in, consent to, or have knowledge of such conduct by its *Employee*, and the *Claim* against the *Covered Party* is based solely on its vicarious liability arising from its relationship with such *Employee*, this exclusion does not apply to said *Covered Party*.

7. **Intentional Violations of Laws and Orders.** We do not cover *Claims* that arise out of a *Covered Party's* intentional failure to comply with, or reckless disregard of, any law, order or regulation relating to employment practices.

8. **Prior Wrongful Employment Practices.** We do not cover liability arising out of any *Claim*, fact, circumstance, situation, transaction or event concerning a *Wrongful Employment Practice* of which any *Covered Party* had received a prior *Claim*, or which was the subject of any notice given under any insurance policy or coverage prior to the *Covered Party* obtaining coverage under this Memorandum.

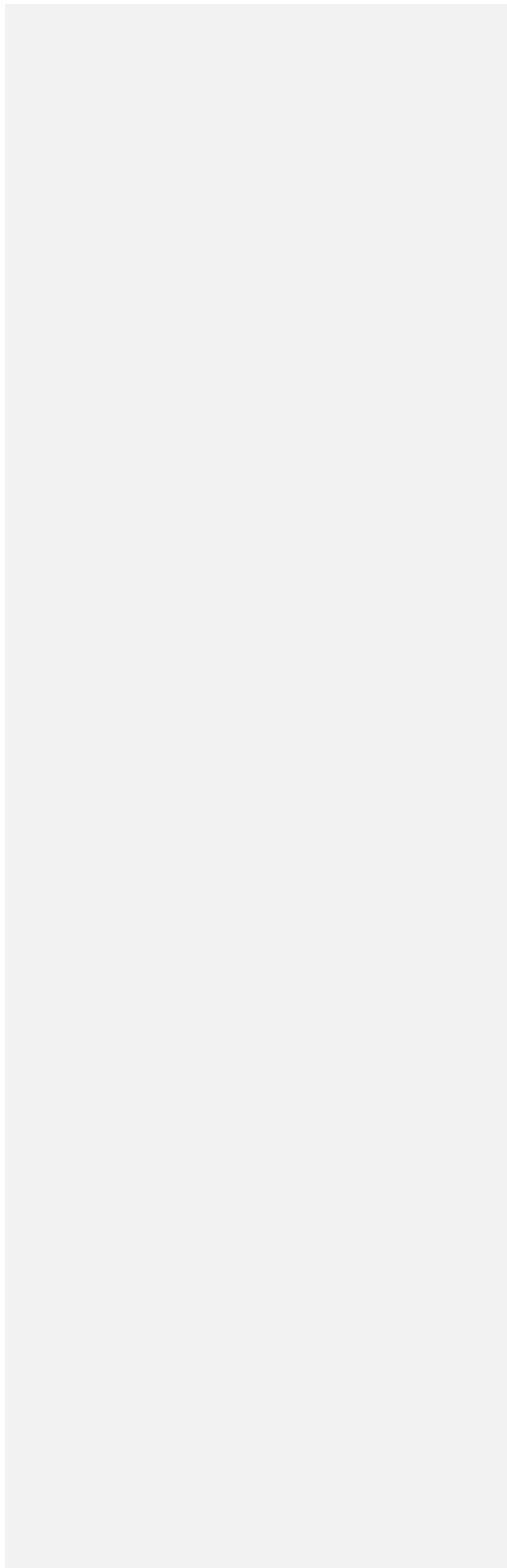
9. **Property Damage.** We do not cover *Claims* for damage to or destruction of any tangible property, including loss of its use.

10. **Strikes and Lockouts.** We do not cover *Claims* that arise out of a lockout, strike, picket line, replacement or other similar actions resulting from labor disputes or labor negotiations.

11. **Ultimate Net Loss.** We do not cover *Ultimate Net Loss* arising out of relief, or redress, in any form other than money *Damages* or seeking only injunctive or non-monetary relief, regardless of whether a prevailing claimant may be entitled to recover attorney's fees and costs.

12. **Actions for Administrative or Equitable Relief.** We do not cover any action, in any forum, for injunctive, administrative, declaratory, or other non-monetary form of relief, including specific performance, nor hearings of internal administrative matters or actions involving the review of any final administrative order or decision made as the result of an administrative hearing, regardless of whether such action seeks *Damages* or attorneys' fees. This exclusion is in addition to, and does not conflict with, Exclusion 11, above.

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13. **Workers' Compensation or Similar Law.** We do not cover obligations under a workers' compensation law, Labor Code 132a, disability benefits or unemployment compensation law, or any similar law. This exclusion does not apply to *Retaliation* or *Discrimination* for filing a workers' compensation *Claim* or a *Claim* for disability benefits.
14. **Actions by Inmates or Prisoners.** We do not cover *Claims* for injury or *Damages* brought by any person:
 - (A) performing labor or services, either voluntarily or involuntarily, while incarcerated in any state or local correctional or penal institution or facility; or
 - (B) performing labor or services, either voluntarily or involuntarily, as a condition of or in satisfaction of any penal sentence.

SECTION VII – CONDITIONS

1. *Covered Party's Duties in the Event of Occurrence, Claim, or Suit*

The following provisions are conditions precedent to coverage under this Memorandum. The *Covered Party's* failure to comply with any of these provisions shall void the coverage provided herein.

- (A) The *Covered Party* shall notify the *Authority* within 30 days upon receipt of notice of a *Claim* by an *Employee*.

Written notice containing particulars sufficient to identify the claimant(s), the *Covered Party(ies)*, and also reasonably obtainable information with respect to the time, place, and circumstances thereof, and the names and addresses of the *Covered Party* and of available witnesses, shall be given to the *Authority* or any of its authorized agents as soon as possible.

- (B) Any *Claim*, except one which the Litigation Manager has discretion to accept, which is not reported to the *Authority* within 30 days, as required by subsection (A) herein, shall be considered untimely and shall be denied. The Litigation Manager shall have discretion to accept as timely any *Claim* reported after 30 days except for any of the following: notice from the U.S. Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing or any other state or federal Government agency to which an *Employee* has made a claim; a Government claim; or a civil lawsuit.

The *Covered Party* may appeal the denial of such *Claim* to the *Authority's* Board of Directors in accordance with the appeal procedure set forth in Section 7 below. The Board shall consider the following factors in its determination of the appeal:

- (l) Late reported *Claims* are strongly disfavored. Relief from denial of coverage for a

Claim reported more than 90 days late shall not be granted, absent extraordinary circumstances as determined by the Board, in its sole discretion.

An appeal based on the *Covered Party's* lack of familiarity with the definition of a *Claim* and/or its obligation to timely report the *Claim* to the *Authority* shall be strongly disfavored, since the *Covered Party* is responsible for understanding the definition of a *Claim* and adhering to the reporting requirements set forth herein.

- (2) An appeal based on the absence of the employee designated by the *Covered Party* as responsible for reporting *Claims* must be verified, and the employee must have been absent during the entire time the *Claim* was not reported.
- (3) An appeal of any late-reported *Claim* which the Board, in its sole discretion, determines may result in any financial or other prejudice to the *Authority* shall be denied regardless of any provision set forth herein or any other basis for the appeal.

Each appeal shall be considered on its own merits, and the Board's decision on any one appeal shall not establish any precedent for future appeals.

For all late-reported *Claims* for which the *Covered Party's* appeal of the denial of coverage is granted, the Board shall increase the *Covered Party's Retained Limit* as follows:

PENALTY STRUCTURE

SIR	Penalty	Percentage of Penalty to SIR
\$25,000	\$6,250	25%
\$50,000	\$12,500	25%
\$75,000	\$18,750	25%
\$100,000	\$25,000	25%
\$250,000	\$37,500	15%
\$500,000	\$50,000	10%

This provision shall not be construed as limiting the Board's power to deny an appeal of any late-reported *Claim*.

- (C) If a suit is brought against the *Covered Party*, in addition to the information required by subparagraph (A), the *Covered Party* shall be obligated to forward immediately to the *Authority* every demand, notice, summons, or other process received by it or its representative.
- (D) The *Covered Party* shall cooperate with the *Authority* and upon its request assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the *Covered Party* because of *Wrongful Employment Practice* with respect to which coverage is afforded under this Memorandum. The *Covered Party* shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. In all matters in which the

Authority has selected defense counsel, the Covered Party shall refrain from interference with the Authority's control of the defense, and shall cooperate fully with the defense counsel and the Authority in respect to the defense of the Covered Parties in the Claim or suit.

With regard to the settlement of any Claim or suit, if the Covered Party's refusal to cooperate with the Authority in the conduct of the defense, execution of documents, enforcement of any right of contribution or indemnity, or in any other manner prevents settlement of the claim for a reasonable amount, defined as the amount the Authority is willing to pay and the claimant is willing to accept, and increases the potential liability for Damages and continued Defense Costs, the Covered Party shall pay or shall reimburse the Authority for those Defense Costs incurred after the claim could have been settled, and for any Damages awarded or settlement agreed upon in excess of the amount for which the claim could have been settled, or, in the alternative, the Authority shall have the right to tender the claim back to the Covered Party and coverage shall cease.

(E) The Authority shall be entitled to complete access of the Covered Party's Claim file, the defense attorney's complete file, and all investigation material and reports, including all evaluations and information on negotiations. The Covered Party through assigned defense counsel shall be responsible to report on the progress of the litigation and any significant developments to the Authority, and to provide the Authority with simultaneous copies of all correspondence provided to the Covered Party by its defense attorneys and/or agents.

(F) If the Covered Party is not in substantial compliance with the requirements of Government Code §12950.1 (AB 1825) during the Coverage Period for an Occurrence related to that code section, the Board shall increase the Covered Party's Retained Limit as follows:

PENALTY STRUCTURE

<u>SIR</u>	<u>Penalty</u>	<u>Percentage of Penalty to SIR</u>
<u>\$25,000</u>	<u>\$6,250</u>	<u>25%</u>
<u>\$50,000</u>	<u>\$12,500</u>	<u>25%</u>
<u>\$75,000</u>	<u>\$18,750</u>	<u>25%</u>
<u>\$100,000</u>	<u>\$25,000</u>	<u>25%</u>
<u>\$250,000</u>	<u>\$37,500</u>	<u>15%</u>
<u>\$500,000</u>	<u>\$50,000</u>	<u>10%</u>

shall be doubled for such cla

(F) ~~in~~ Proof of substantial compliance shall be provided at the request of the Authority and in the form set forth in Resolution No. ~~2010-22021-X~~, or any superseding Resolution, which requires documentation to confirm compliance with the sexual harassment training mandated by State law.

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2. Bankruptcy or Insolvency

Bankruptcy or insolvency of the Covered Party shall not relieve the Authority of any of its

obligations hereunder.

3. Other Coverage

If any *Covered Party* has coverage with any insurer, joint powers authority or other source which covers a loss also covered hereunder (whether on a primary, excess or contingent basis), the *Covered Party* shall, as soon as practicable after reporting a *Claim* to the *Authority*, or upon request of the *Authority*, provide the *Authority* with copies of all applicable policies, memorandums or documents evidencing such coverage, and shall cooperate in all respects with the *Authority* with respect to such coverage, including but not limited to the tendering of any *Claim* and providing the *Authority* with copies of all communications between the *Covered Party* and any entity providing coverage for such *Claim*.

If insurance or any other coverage with any insurer, joint powers authority or other source is available to the *Covered Party* covering a loss also covered hereunder (whether on primary, excess, or contingent basis), the coverage hereunder shall be in excess of, and shall not contribute with, such other insurance or coverage.

This coverage shall be in excess of, and shall not contribute with, any insurance or coverage which names a *Covered Party* herein as an additional *Covered Party* or additional insured party, where coverage is extended to a loss also covered hereunder. In order for the coverage herein to apply, the *Covered Party* must pay the full amount of its *Retained Limit*. Payment of the *Retained Limit* by the *Covered Party* is required in addition to and despite any payments from any other source for or on behalf of that *Covered Party*, unless the *Covered Party* has purchased insurance coverage solely and expressly for the purpose of satisfying its *Retained Limit*, in which case that insurance coverage may be used by the *Covered Party* in payment of its *Retained Limit*.

4. Accumulation of Limits

A *Claim* which contains allegations extending to a duration of more than one *Coverage Period* shall be treated as a single *Occurrence* arising during the *Coverage Period* when the first act takes place without regard to any review process or appeal relating to such conduct.

5. Severability of Interests

The term *Covered Party* is used severally and not collectively, but the inclusion herein of more than one *Covered Party* shall not operate to increase the limits of the *Authority's* liability or the *Retained Limit* applicable per *Occurrence*.

6. Subrogation

The *Authority* shall be subrogated to the extent of any payment hereunder to all the *Covered Parties'* rights of recovery thereof and the *Covered Parties* shall do nothing after loss to prejudice such right and shall do everything necessary to secure such right. Any amounts so recovered shall be apportioned as follows:

- (A) The highest layer of coverage shall be reimbursed first and if there are sufficient recoveries then the next highest layer shall be reimbursed until all recoveries are used up.
- (B) The expenses of all such recovery proceedings shall be paid before any reimbursements are made. If there is no recovery in the proceedings conducted by the *Authority*, it shall bear the expenses thereof.

7. Arbitration

Decisions by the *Authority* whether to assume control of the negotiation, investigation, defense, appeal, or settlement of a *Claim*, or whether or not coverage exists for a particular *Claim* or part of a *Claim* or any other dispute that arises under and in connection with the Memorandum shall be made by the Board of Directors of the *Authority*. An appeal to the Board from a coverage decision or opinion by staff or general counsel must be made in writing to the *Authority* by the *Covered Party* thirty (30) calendar days of receipt of such opinion or decision. If, either prior to or following the Board's decision, a new coverage opinion or decision is sent by staff or general counsel to the *Covered Party*, a new thirty (30) calendar day period commences from receipt of such new opinion or decision in which the *Covered Party* may appeal to the Board. The Program Administrator shall have the discretion to extend the time period within which an appeal from a coverage decision or opinion must be presented to the Board by an additional 30 days.

The Board will take action on any appeal within sixty (60) calendar days or the next scheduled Board of Directors meeting, whichever is later, unless an extension is agreed to by the parties.

In the event a *Covered Party* disputes a decision by the Board, the *Covered Party* must request to binding arbitration within thirty (30) calendar days of written notification of the Board's decision. The *Covered Party* must exhaust all rights to appeal as established by the Bylaws, the Master Program Document and the Memorandum of Coverage prior to requesting arbitration of a dispute.

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.

SECTION VIII – MISCELLANEOUS PROVISIONS

1. Termination

This Memorandum may be terminated at any time in accordance with the Bylaws of the *Authority*.

2. Changes

Notice to any agent of the *Authority* or knowledge possessed by such agent or by any other person shall not effect a waiver or a change in any part of this Memorandum of Coverage, nor shall the terms of this Memorandum of Coverage be waived or changed, except by endorsement issued to form a part of this Memorandum of Coverage.

**EMPLOYMENT RISK MANAGEMENT AUTHORITY
MEMORANDUM OF COVERAGE
ENDORSEMENT #1**

This endorsement, effective 12:01 a.m. 7/1/2020~~1~~, forms a part of ERMA 2020~~1~~-1EPL. It is understood that the named Covered Party of the Declarations and the “Retained Limits” for the Covered Parties are completed as follows:

Employment Risk Management Authority,

Bay Cities Joint Powers Insurance Authority (BCJPIA)

COVERED PARTY	RETENTION
City of Albany	\$50,000
City of Brisbane	\$50,000
City of Emeryville	\$50,000
Management of Emeryville Services Authority (MESA)	
Town of Corte Madera	\$100,000
Town of Fairfax	\$50,000
Central Marin Police Authority	\$100,000
Central Marin Fire Authority	\$100,000
City of Larkspur	\$250,000
City of Los Altos	\$100,000
City of Menlo Park	\$250,000
City of Mill Valley	\$50,000
City of Novato	\$250,000
City of Piedmont	\$50,000
City of Pleasanton	\$75,000
<i>(No coverage under this Memorandum is afforded to the Livermore-Pleasanton Fire Department)</i>	
Town of San Anselmo	\$50,000
City of Sausalito	\$50,000
Town of Tiburon	\$25,000
City of Union City	\$75,000

California Transit Indemnity Pool (CalTIP)

COVERED PARTY	RETENTION
El Dorado County Transit Authority	\$50,000
Humboldt Transit Authority	\$75,000
Livermore Amador Valley Transit Authority	\$50,000
Mendocino Transit Authority	\$50,000
Morongo Basin Transit Authority	\$50,000
San Luis Obispo Regional Transit Authority	\$50,000
South County Area Transit	\$50,000
Tahoe Transportation District	\$50,000
Western Contra Costa Transit Authority	\$50,000
Yolo County Transportation District	\$50,000

Central San Joaquin Valley Risk Management Authority (CSJVRMA)

COVERED PARTY	RETENTION
City of Angels	\$25,000
City of Atwater	\$25,000
City of Ceres	\$25,000
City of Chowchilla	\$25,000
City of Corcoran	\$25,000
City of Delano	\$25,000
City of Dinuba	\$100,000
City of Dos Palos	\$25,000
City of Escalon	\$25,000
City of Farmersville	\$75,000
City of Fowler	\$25,000
City of Gustine	\$25,000
City of Hughson	\$25,000
City of Huron	\$25,000
City of Kerman	\$25,000
City of Kingsburg	\$25,000
City of Lathrop	\$25,000
City of Lemoore	\$25,000
City of Livingston	\$25,000
City of Madera	\$25,000
City of McFarland	\$50,000
City of Mendota	\$25,000
City of Merced	\$100,000
City of Newman	\$25,000
City of Oakdale	\$50,000
City of Orange Cove	\$50,000
City of Patterson	\$50,000
City of Porterville	\$25,000
City of Reedley	\$25,000
City of Riverbank	\$50,000
City of San Joaquin	\$25,000
City of Sanger	\$25,000
City of Selma	\$50,000
City of Shafter	\$25,000
City of Sonora	\$25,000
City of Taft	\$25,000
City of Tehachapi	\$25,000
City of Tulare	\$100,000
City of Wasco	\$50,000
City of Woodlake	\$25,000

Exclusive Risk Management Authority of California (ERMAC)

COVERED PARTY	RETENTION
City of Hayward	\$500,000
City of Laguna Hills	\$100,000
City of Santa Maria	\$500,000

Monterey Bay Area Self Insurance Authority (MBASIA)

COVERED PARTY	RETENTION
City of Capitola	\$500,000
City of Del Rey Oaks	\$500,000
City of Gonzales	\$500,000
City of Greenfield	\$500,000
City of Hollister	\$500,000
City of King City	\$500,000
City of Marina	\$500,000
City of Sand City	\$500,000
City of Scotts Valley	\$500,000
City of Soledad	\$500,000

Municipal Pooling Authority (MPA)

COVERED PARTY	RETENTION
City of Antioch	\$50,000
City of Brentwood	\$50,000
City of Clayton	\$50,000
Town of Danville	\$50,000
City of El Cerrito	\$50,000
City of Hercules	\$50,000
City of Lafayette	\$50,000
City of Manteca	\$50,000
City of Martinez	\$50,000
Town of Moraga	\$50,000
City of Oakley	\$50,000
City of Orinda	\$50,000
City of Pacifica	\$75,000
City of Pinole	\$50,000
City of Pittsburg	\$50,000
City of Pleasant Hill	\$50,000
City of San Pablo	\$100,000
City of San Ramon	\$50,000
City of Walnut Creek	\$50,000

Public Agency Risk Sharing Authority of California (PARSAC)

COVERED PARTY	RETENTION
City of Amador	\$25,000
City of Avalon	\$25,000
City of Belvedere	\$25,000
City of Blue Lake	\$25,000
City of California City	\$100,000
City of Calimesa	\$25,000
City of Calistoga	\$25,000
City of Citrus Heights	\$100,000
City of Clearlake	\$25,000
City of Coalinga	\$25,000
City of Ferndale	\$25,000
City of Grass Valley	\$25,000
City of Highland	\$25,000
City of Menifee	\$25,000
City of Nevada City	\$25,000
City of Placencia	\$100,000
City of Placerville	\$50,000
City of Plymouth	\$25,000
City of Point Arena	\$25,000
City of Rancho Cucamonga	\$250,000
Rancho Cucamonga Fire Protection District	\$75,000
City of Rancho Santa Margarita	\$25,000
City of San Juan Bautista	\$25,000
City of South Lake Tahoe	\$100,000
City of Tehama	\$25,000
City of Trinidad	\$25,000
City of Truckee	\$25,000
City of Twentynine Palms	\$25,000
City of Watsonville	\$250,000
City of Wheatland	\$25,000
City of Wildomar	\$25,000
Town of Yountville	\$25,000
City of Yucaipa	\$50,000
Town of Yucca Valley	\$100,000

Public Entity Risk Management Authority (PERMA)

COVERED PARTY	RETENTION
City of Banning	\$25,000
City of Barstow	\$25,000
City of Canyon Lake	\$25,000
City of Cathedral City	\$25,000
City of Coachella	\$25,000
City of Desert Hot Springs	\$25,000
City of Eastvale	\$25,000
City of Hesperia	\$50,000
City of Holtville	\$25,000
Imperial County Transportation Commission	\$25,000
City of Jurupa Valley	\$25,000
City of La Mesa	\$25,000
City of Murrieta	\$100,000
Palm Springs Aerial Tramway	\$25,000
City of Perris	\$25,000
City of Rancho Mirage	\$50,000
San Diego Regional Training Center	\$25,000
City of San Jacinto	\$25,000
SunLine Transit Agency	\$50,000
Victor Valley Transit Authority	\$25,000
City of Victorville	\$25,000

Pooled Liability Assurances Network (PLAN)

COVERED PARTY

RETENTION

City of American Canyon
Town of Atherton
Town of Woodside

\$50,000
\$100,000
\$50,000

Small Cities Organized Risk Effort (SCORE)

COVERED PARTY	RETENTION
City of Biggs	\$25,000
City of Colfax	\$25,000
City of Dunsmuir	\$50,000
City of Live Oak	\$25,000
City of Mt. Shasta	\$25,000
City of Portola	\$25,000
City of Rio Dell	\$25,000
City of Shasta Lake	\$25,000
City of Susanville	\$25,000
City of Tulelake	\$25,000
Town of Loomis	\$25,000
City of Weed	\$100,000
City of Yreka	\$25,000

Vector Control Joint Powers Agency (VCJPA)

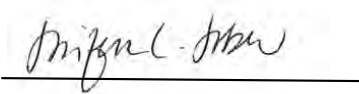
COVERED PARTY	RETENTION
Alameda County Mosquito Abatement District	\$25,000
Burney Basin Mosquito Abatement District	\$25,000
Butte County Mosquito and Vector Control District	\$25,000
Coachella Valley Mosquito and Vector Control District	\$25,000
Colusa Mosquito Abatement District	\$25,000
Compton Creek Mosquito Abatement District	\$25,000
Consolidated Mosquito Abatement District	\$25,000
Contra Costa Mosquito and Vector Control District	\$25,000
Delta Vector Control District	\$25,000
Durham Mosquito Abatement District	\$25,000
Fresno Mosquito and Vector Control District	\$25,000
Glenn County Mosquito and Vector Control District	\$25,000
Greater Los Angeles County Vector Control District	\$25,000
Kings Mosquito Abatement District	\$25,000
Lake County Vector Control District	\$25,000
Los Angeles County West Vector Control District	\$25,000
Marin-Sonoma Mosquito and Vector Control District	\$25,000
Mosquito and Vector Management District of Santa Barbara County	\$25,000
Napa County Mosquito Abatement District	\$25,000
Northwest Mosquito and Vector Control District	\$25,000
Orange County Mosquito and Vector Control District	\$25,000
Oroville Mosquito Abatement District	\$25,000
Placer Mosquito and Vector Control District	\$25,000
Sacramento-Yolo Mosquito and Vector Control District	\$25,000
San Gabriel Valley Mosquito and Vector Control District	\$25,000
San Joaquin County Mosquito and Vector Control District	\$25,000
San Mateo County Mosquito Abatement District	\$25,000
Shasta Mosquito and Vector Control District	\$25,000
Sutter-Yuba Mosquito and Vector Control District	\$25,000
Tehama County Mosquito and Vector Control District	\$25,000
Turlock Mosquito Abatement District	\$25,000
West Valley Mosquito and Vector Control District	\$25,000

Individual Entities

COVERED PARTY	RETENTION
Oakland Housing Authority	\$50,000
Contra Costa County Housing Authority	\$50,000

Effective Date: ~~July 1, 2020~~ January 1, 2021

Endorsement No.: 1



AUTHORIZED REPRESENTATIVE

**EMPLOYMENT RISK MANAGEMENT AUTHORITY
MEMORANDUM OF COVERAGE
ENDORSEMENT #2**

This endorsement, effective 12:01 a.m. ~~1/7/2020~~1/1/2021, forms a part of ERMA 2020-1-EPL.

It is understood that the definition of “Covered Party” in Section II is amended to include the following entities and any officer, director or employee while in the course and scope of their duties for the following entities:

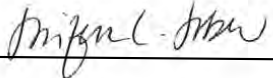
- Bay Cities Joint Powers Insurance Authority (BCJPIA)
- California Transit Indemnity Pool (CalTIP)
- Central San Joaquin Valley Risk Management Authority (CSJVRMA)
- Employment Risk Management Authority (ERMA)
- Exclusive Risk Management Authority of California (ERMAC)
- Monterey Bay Area Self Insurance Authority (MBASIA)
- Municipal Pooling Authority (MPA)
- Public Agency Risk Sharing Authority of California (PARSAC)
- Public Entity Risk Management Authority (PERMA)
- Pooled Liability Assurances Network (PLAN)
- Small Cities Organized Risk Effort (SCORE)
- Vector Control Joint Powers Agency (VCJPA)

The retained limit for the coverage provided by this endorsement is \$25,000.

It is further understood that no other person, organization, or entity shall be deemed to be a “Covered Party” under this endorsement except for those expressly identified herein.

Effective Date: ~~July 1, 2020~~January 1, 2021

Endorsement No.: 2



AUTHORIZED REPRESENTATIVE

**EMPLOYMENT RISK MANAGEMENT AUTHORITY
MEMORANDUM OF COVERAGE
ENDORSEMENT #3**

This endorsement, effective 12:01 a.m. ~~1/7/2020~~1/1/2021, forms a part of ERMA 202~~10~~-1EPL.

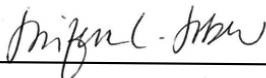
It is understood that for the following Covered Parties, the limit of coverage is \$500,000 per *Occurrence*.

Small Cities Organized Risk Effort (SCORE)

COVERED PARTY	RETENTION
City of Biggs	\$25,000
City of Colfax	\$25,000
City of Dunsmuir	\$50,000
City of Live Oak	\$25,000
City of Portola	\$25,000
City of Mt. Shasta	\$25,000
City of Shasta Lake	\$25,000
City of Susanville	\$25,000
City of Tulelake	\$25,000
City of Rio Dell	\$25,000
Town of Loomis	\$25,000
City of Weed	\$100,000
City of Yreka	\$25,000

Effective Date: ~~July 1, 2020~~January 1, 2021

Endorsement No.: 3



AUTHORIZED REPRESENTATIVE

COVERAGE MATTERS

SUBJECT: Consideration of Additional Self-Insured Retention Option

BACKGROUND AND STATUS:

Since 2011, ERMA has offered its members six self-insured retention (SIR) options: \$25,000; \$50,000; \$75,000; \$100,000; \$250,000; and \$500,000.

As previously reported, the Public Agency Risk Sharing Authority of California (PARSAC) and the Redwood Empire Municipal Insurance Fund (REMIF) are in the process of merging operations and plan to form the California Intergovernmental Risk Sharing Authority (CIRA), effective July 1, 2021. REMIF is comprised of fifteen member cities located throughout Sonoma, Mendocino and Humboldt Counties, all of whom intend to apply for participation in ERMA as underlying members of CIRA.

Given CIRA's planned coverage structure, ERMA was asked to consider the addition of a \$350,000 SIR beginning in the 2021/22 Program Year. PARSAC's thirty-four member cities all currently participate in ERMA with SIRs varying from \$25,000 to \$250,000, as follows:

Self-Insured Retention (SIR)	# of Member Cities
\$25,000	24
\$50,000	2
\$75,000	1
\$100,000	5
\$250,000	2

Should ERMA approve an additional \$350,000 SIR option, PARSAC's underlying members will move to the increased retention collectively under CIRA, thus reducing ERMA's exposure.

RECOMMENDATION:

Staff recommends the Committee provide direction.

COVERAGE MATTERS

SUBJECT: Discussion Regarding Personnel Policies and Procedures Compliance

BACKGROUND AND STATUS:

As a participating member of ERMA, agencies are required to maintain personnel policies and procedures which are regularly updated and reviewed by legal counsel. Potential members, when applying for participation in the program, are required to provide detailed information regarding existing personnel policies and procedures, whether policies and procedures are in compliance with California Government Code, and whether regular reviews by legal counsel take place.

During the 2017/18 Program Year, the Board of Directors allocated funds so that members were able to engage in a formal review of their existing personnel policies and procedures. ERMA's strategic partner law firms, Jackson Lewis and Liebert Cassidy Whitmore, conducted reviews for each member agency, culminating in the issuance of a recommended action memorandum that outlined necessary policy updates, training deficiencies and other risks. Since that time, no direct member follow-up has taken place. However, access to reduced attorney fees for policy-related work and additional funding sources continue to be made available to all member agencies who underwent a review.

Staff recommends the Committee consider whether implementation of a requirement that member agencies regularly maintain, review and update personnel policies and procedures is necessary and/or beneficial to the program.

RECOMMENDATION:

Staff recommends the Committee provide direction.

REFERENCE MATERIAL ATTACHED:

- ERMA Liability Coverage Application for Joint Powers Authority

EMPLOYMENT RISK MANAGEMENT AUTHORITY (ERMA) LIABILITY COVERAGE APPLICATION FOR PROSPECTIVE JOINT POWER AUTHORITIES

If completed electronically, this application will adjust to allow space for any answers. If not completed electronically, then additional sheets may be needed.

ENTITY NAME: _____		Date: _____	
EMPLOYMENT PRACTICES INFORMATION			
A. Entity Information			
1.	Identify the structure of the applying Entity:		
	<input type="checkbox"/> In-house Staff Joint Powers Authority (Proceed to Section B.)	<input type="checkbox"/> Contracted Staff Joint Powers Authority (Proceed to Section F.)	
B. Policies and Procedures			
1.	Does the Entity have written personnel policies and procedures?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2.	Does the Entity distribute the manual/rules to all employees?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3.	Does the Entity have employees sign an acknowledgement form indicating they have read and understood the above-referenced policies?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4.	Are the following policies or procedures included in the manual? Check all that apply:		
	<input type="checkbox"/> Hiring	<input type="checkbox"/> Termination	<input type="checkbox"/> Suspension
	<input type="checkbox"/> Medical Leave	<input type="checkbox"/> Unpaid Leave	<input type="checkbox"/> Grievance Procedures
	<input type="checkbox"/> Drug & Alcohol Testing	<input type="checkbox"/> Discipline	<input type="checkbox"/> Attendance
	<input type="checkbox"/> Family Medical Leave Act	<input type="checkbox"/> Anti-Harassment Policies	
	<input type="checkbox"/> Written Job Description for all Positions	<input type="checkbox"/> Workplace Violence Policies	
	<input type="checkbox"/> Annual Written Performance Evaluations for all Employees		
	<input type="checkbox"/> Employee Hotline/Complaint Procedure		
5.	Do the policies/rules include all protected categories under the Fair Employment and Housing Act (FEHA), Ca. Gov't. Code section 12940)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6.	Does the Entity have legal counsel regularly review the manual/rules?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7.	Have the above-referenced policies been updated within the past five years?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	If no, when was the manual or rules last reviewed?		
8.	Were the above-referenced policies formally approved and adopted by council/governing board?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
9.	Does the Entity have legal counsel to provide advice regarding disciplinary matters?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
10.	Does the entity have an orientation program for all employees that addresses workplace conduct, EPL policies and practices, and grievance procedures?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<i>If you answered no to any of the above, please use this space to provide more information:</i>			

C. Employee Information	
1.	Number of Full Time Employees:
2.	Number of Part time Employees:
3.	For each of the past five years, what has been your annual percentage turnover rate of employees?

	20	%	20	%	20	%	20	%	20	%	
4.	How many involuntary employment terminations have occurred in the past three years?										
	20					20					
	<i>Involuntary employment termination with respect to this questionnaire means notification to an employee that such employee will no longer be employed whether such notification is effective immediately or in the future. Involuntary employment termination shall also include actual or alleged constructive discharge.</i>										
5.	Percentage of Employees with salaries less than \$100,000							Should = 100%			
	%										
6.	Percentage of Employees with salaries greater than \$100,000										
	%										

D.	Employment Practices Claims Handling										
1.	Who in the Entity has been designated to handle claims?										
2.	(a) With respect to oral or written claims, do you have a written procedure for obtaining information and conducting required follow up on the claim?							<input type="checkbox"/> Yes <input type="checkbox"/> No			
	(b) Do you require written claims for EEO-related complaints?							<input type="checkbox"/> Yes <input type="checkbox"/> No			
	If yes to 2(a), describe the policy and procedure for receiving, reviewing, and responding to claims:										
3.	Does the Employment Claims handler coordinate with the Workers' Compensation Administrator on all claims involving actual or potential industrial injuries? <input type="checkbox"/> Yes <input type="checkbox"/> No										
4.	Has your entity received any claim in the previous 7 completed fiscal years, including the partial current fiscal year, (including but not limited to Tort Claim, any and all claims filed with the DFEH, EEOC, Department of Labor or Federal Department of Justice, any civil lawsuit or other written claim) alleging the following?										
	(a) Allegations of discrimination or harassment under FEHA, Title VII or any other federal or state law relating to discrimination based on race, sex, religion, disability, national origin, marital status, age, sexual orientation, retaliation or any other protected legal status;							<input type="checkbox"/> Yes <input type="checkbox"/> No			
	(b) Allegations of retaliation relating to an Employee engaging in protected activity involving any EEO-related complaint, protected leave status, worker's compensation claim, or any other protected activity or status;							<input type="checkbox"/> Yes <input type="checkbox"/> No			
	(c) Actual or alleged constructive termination of an employment relationship in a manner which is alleged to have been against the law or wrongful, or in breach of an implied employment contract or breach of the covenant of good faith and fair dealing in the employment contract;							<input type="checkbox"/> Yes <input type="checkbox"/> No			
	(d) Allegations of negligent or wrongful evaluation, wrongful demotion, wrongful discipline, failure to promote, failure to grant tenure, or wrongful deprivation of career opportunity;							<input type="checkbox"/> Yes <input type="checkbox"/> No			
	(e) Allegations of misrepresentation or defamation made by an <i>Employee</i> which arise from an employment decision to hire, fire, promote, demote or discipline;							<input type="checkbox"/> Yes <input type="checkbox"/> No			
	(f) Allegations of infliction of emotional distress, mental injury, mental anguish, shock, sickness, disease or disability made by an <i>Employee</i> which arise from an employment decision to hire, fire, promote, demote or discipline;							<input type="checkbox"/> Yes <input type="checkbox"/> No			

	(g) Allegations of false imprisonment, detention, or malicious prosecution made by an <i>Employee</i> which arise from an employment decision to hire, fire, promote, demote or discipline;	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(h) Allegations of libel, slander, defamation of character, invasion of privacy made by an <i>Employee</i> which arise from an employment decision to hire, fire, promote, demote or discipline; and	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(i) Other personal injury allegations made by an <i>Employee</i> which arise from an employment decision to hire, fire, promote, demote or discipline.	<input type="checkbox"/> Yes <input type="checkbox"/> No
If the answer is yes to any of the above, please attach a listing of the loss(es) showing a full description of each claim, including the date filed, the substance of the allegations, the disposition of the claim, and any monetary amounts paid in connection with the claim.		

E. Employment Practices Risk Management		
1.	Does the applicant have a Human Resources or Personnel Department?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If no, please describe handling of this function:	
2.	Do you have any established set of grievance or complaint procedures as an effective means of resolving disputes prior to litigation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.	Do you anticipate any “layoffs” during the next 24 months?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If yes, please provide details.	
4.	Have you had any “layoffs” in the past 36 months?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If yes, please provide details.	
5.	Is your entity in full compliance with the training requirements set forth in AB 1825, SB 1343 and SB 778?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If no, please explain.	
6.	Briefly describe the procedure for maintaining AB 1825 and SB 1343 training records:	
7.	Does your entity provide SB 1343 training?	<input type="checkbox"/> Yes <input type="checkbox"/> No
8.	Are elected officials trained on the entity’s policy regarding harassment, discrimination, and retaliation?	<input type="checkbox"/> Yes <input type="checkbox"/> No

E. DESIRED SELF-INSURED RETENTION
<input type="checkbox"/> \$25K <input type="checkbox"/> \$50K <input type="checkbox"/> \$75K <input type="checkbox"/> \$100K <input type="checkbox"/> \$250K <input type="checkbox"/> \$500K

Please attach the following:

- *Member application fee of \$2,500 for prospective JPAs. (Upon approval and completion of the first year of membership, a credit in the amount equal to the fee remitted upon application will be issued in the form of a premium credit.)*
- *EPL individual loss information (including Date of Loss and total incurred) for the previous 7 completed fiscal years, including the partial current fiscal year;*
- *Payroll information for the previous 7 completed calendar years;*
- *Completed resolution authorizing participation in ERMA;*
- *Completed intent to participate; and*
- *Most Recent Financial Audit.*

The undersigned declares that no fact, circumstance, or situation indicating the probability of a claim or action is now known to any person proposed for this coverage; and it is agreed by all concerned that if there be knowledge of any such fact, circumstance or situation, any claim or action subsequently emanating therefrom shall be excluded from coverage under the coverage for herewith being applied. The undersigned being authorized by, and acting on behalf of, the applicant and all persons or concerns seeking coverage, has read and understands this application, and declares all statements set forth herein are true, complete, and accurate, and include all material information.

The undersigned further declares and represents that any occurrence taking place prior to the inception of the coverage for which is being applied, which may render inaccurate, untrue or incomplete any statement made herein will immediately be reported in writing to ERMA. The undersigned acknowledges and agrees that the submission and ERMA's receipt of such report, prior to the inception of the coverage for which being applied, is a condition precedent to coverage.

The undersigned acknowledges:

- (1) ERMA does not require the submittal of the aforementioned policies and procedures. ERMA does, however, rely on the information provided by the applicant in review of the application and the undersigned, therefore, declares and represents that the policies and procedures as represented above are the current policies and procedures of the entity.
- (2) ERMA's Board of Directors may recommend a risk assessment of any new member within 60 days of joining ERMA and/or a higher self-insured retention from what was requested, if an application for membership is approved.

The undersigned further acknowledges and agrees this application contains requests for information and requests for data on a range of exposures, but such requests do not imply that coverage is afforded in the program for which is being applied.

Agency or Entity Name

Applicant's Name (please print)

Title

Applicant's Signature

Date

COVERAGE MATTERS

SUBJECT: Discussion and Review of Underwriting Guidelines

BACKGROUND AND STATUS:

ERMA's Underwriting Guidelines were last updated and approved in February 2014.

At the February 2020 Annual Workshop, the Board of Directors established a goal to review and identify any necessary updates to the guidelines. In particular, the Board expressed a desire to review the established payroll threshold of potential individual direct members interested in participating in ERMA.

Two JPAs — The California Intergovernmental Risk Sharing Authority and the Yolo County Public Agency Risk Management Insurance Authority, have notified ERMA of their intent to apply for participation for the 2021/22 Program Year. As the initial application and underwriting process is currently underway, staff recommends the Committee review the underwriting guidelines with the intent to implement any necessary updates or changes, effective July 1, 2021.

RECOMMENDATION:

Staff recommends the Committee review ERMA's Underwriting Guidelines and provide direction.

REFERENCE MATERIAL ATTACHED:

- ERMA Underwriting Guidelines

ERMA Underwriting Guidelines:
Adopted June 21, 2010; Amended June 18, 2012; Amended February 21, 2014

Any public agency acceptable to the Board of Directors shall be eligible for membership in ERMA. Agencies may request a preliminary premium indication by providing ERMA with total payroll for the last completed calendar year to mirror data collection for the annual budget process.

Upon request from a prospective member, a preliminary premium indication will be provided including available self-insured retention (SIR) options. If the request for a premium indication is presented prior to the next fiscal year premium rates, an indication will be provided based on the rates used for the current program year. Approval for membership will be contingent upon the review of a formal submission of the required documents by the Underwriting Committee (Committee), the Committee's recommendation for membership to the Board of the Directors, and membership approval by the Board of Directors, at a regular or special Board meeting. A prospective member may select from a variety of SIRs, but any selection of an SIR outside these Guidelines' recommendations must be specifically approved by the Board of Directors.

The member's SIR must be exhausted prior to ERMA paying any defense or indemnity to which the member may become liable. The applicant must have the financial ability to pay for all claims that fall under their SIR. A copy of the ERMA governing documents will be included in the premium indication for the prospective member's review.

Formal Submittal Documents Required:

1. Completed ERMA Liability Coverage Application (including desired SIR) and the entity's most recent audited financial statements;
2. Payroll for the most current seven calendar years;
3. Seven completed fiscal years, and including the partial current fiscal year, of currently valued loss runs for wrongful employment practices coverage, employment practices liability insurance, and self-insured losses including SIRs and deductibles; and
4. Signed Resolution acknowledging acceptance of the rules and regulations set forth in the ERMA Governing Documents and the minimum three-year participation period.

Upon receipt of a prospective member's formal submission to join ERMA, staff will:

- Review the submission documents for completion and prepare a report to be presented at the next Underwriting Committee meeting, to review the prospective applicant for a recommendation to the Board.
- If a regular Board of Directors' meeting is not scheduled prior to the desired membership inception date, a special Board of Directors' meeting will be called.
- The prospective member may be invited to attend the Underwriting Committee meeting and Board meeting to answer questions regarding the submission.
- Staff will provide a letter to the prospective member, notifying them of the Board's decision regarding membership, within 15 business days of the Board's decision, or sooner if necessary to accommodate the prospective member's desired inception date.
- The Underwriting Committee's recommendation may include requiring a mini-risk assessment of the new member within 60 days of joining ERMA and/or a higher self-insured retention from what was requested.

Underwriting Guidelines:

1. Completeness of submission materials as requested on the ERMA Liability Coverage Application
 - Policies and procedures are in place as indicated on the application;
 - Attachments provided as indicated on the application; and
 - Signed Resolution.
2. Acceptable detailed loss history for last seven completed years including:
 - Claim frequency (reportable claim count per \$100,000 payroll), not to exceed two-times the ERMA average for the past five completed program years.
 - Claim severity (incurred claim cost per \$100,000 payroll) not to exceed two-times the ERMA average for the past five completed program years.
 - Loss Ratio not to exceed 80% for the last five completed program years. (Applicable to current JPA members moving to individual member or underlying JPA member joining ERMA).
3. Acceptability of SIR request, based on payroll and loss history.
 - Review of payroll for the last seven years relative to losses.
 - Comparison to members with similar payroll.
 - Review of SIR request in consideration of the Recommended SIRs.
4. SIR guidelines have been developed as a guide for new members applying to join ERMA, either as an individual, direct member or underlying member of an ERMA member JPA.

ERMA Recommended SIRs	Payroll Range
25K	< \$10,000,000
50K	< \$25,000,000
75K	< \$30,000,000
100K, 250K, or 500K	< \$50,000,000

5. Thresholds for membership
 - New direct members: Must meet the minimum payroll requirement of \$ 5,000,000.
 - Underlying members of a participating JPA member: Will not have any minimum requirements.

ERMA's Board of Directors will reserve its rights to evaluate any other relevant factors and/or data for inclusion in this Joint Powers Authority. Moreover, ERMA's Board of Directors further reserves its rights to approve an increase or decrease of an applicant's SIR based on the SIR guidelines and the review of the applicant's most current financial statements.