



**EMPLOYMENT RISK MANAGEMENT AUTHORITY  
COVERAGE COMMITTEE MEETING  
AGENDA**

Wednesday, January 8, 2020 ~ 3:00 p.m.

Via Teleconference  
Dial: (347) 557-8497  
Pin: 104 338#

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

Sedgwick, 1750 Creekside Oaks Drive, Suite 200, Sacramento, CA  
PARSAC, 10500 Civic Center Drive, Rancho Cucamonga, CA  
Greater LA VCD, 12545 Florence Avenue, Santa Fe Springs, CA  
City of Brisbane, 50 Park Place, Brisbane, CA  
PERMA, 36-951 Cook Street, Suite 101, Palm Desert, CA

Each location is accessible to the public, and members of the public may address the Coverage Committee from any teleconference location

In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation to participate in this meeting, please contact Mona Hedin at (916) 290-4645 or (916) 244-1199 (fax). Requests must be made as early as possible, and at least one full business day before the start of the meeting. Documents and materials relating to an open session agenda item that are provided to the ERMA Coverage Committee less than 72 hours prior to a regular meeting will be available for public inspection at 1750 Creekside Oaks Dr., Suite 200, Sacramento, CA 95833.

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- 1. CALL TO ORDER/ROLL CALL**
  - 2. APPROVAL OF AGENDA AS POSTED (OR AMENDED)**
  - 3. PUBLIC COMMENTS** - This time is reserved for members of the public to address the Committee relative to matters of ERMA not on the agenda. No action may be taken on non-agenda items unless authorized by law. Comments will be limited to five minutes per person and twenty minutes in total.

1750 Creekside Oaks Drive, Suite 200  
Sacramento, California 95833  
800.541.4591 Fax 916.244.1199



**4. CONSENT CALENDAR**

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

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\*A. Minutes – Meeting of January 14, 2019

*Recommendation: Approval of the Consent Calendar.*

**5. COVERAGE MATTERS**

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

*Recommendation: Staff recommends the Committee consider the proposed revisions to the Memorandum of Coverage for the 2020/21 Program Year, effective July 1, 2020.*

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

*Recommendation: Staff recommends the Committee consider the proposed revisions to the Master Program Document for the 2020/21 Program Year, effective July 1, 2020.*

**6. CLOSING COMMENTS**

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

A. Coverage Committee

B. Staff

**7. ADJOURNMENT**

**EMPLOYMENT RISK MANAGEMENT AUTHORITY (ERMA)**

**MINUTES OF THE COVERAGE COMMITTEE  
MEETING JANUARY 14, 2019**

An ERMA Coverage Committee meeting was held on January 14, 2019, via teleconference.

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

**COMMITTEE MEMBERS ABSENT:** None

**OTHERS PRESENT:** Jennifer Jobe, Executive Director  
Kathy Maylin, Litigation Manager  
Brittany Claypool, Analyst  
Greg O’Dea, Board Counsel  
Yahaira Martinez, York

1. CALL TO ORDER/ROLL CALL

The January 14, 2019, ERMA Coverage Committee meeting was called to order at 2:00 p.m. by President Scott Ellerbrock. Roll call was taken and it was determined a quorum was present.

2. APPROVAL OF AGENDA AS POSTED (OR AMENDED)

**John Gillison moved to approve the agenda as posted. Seconded by Truc Dever. A roll call vote was taken. The motion passed unanimously.**

3. PUBLIC COMMENTS

None.

4. COVERAGE MATTERS

A. Review of Proposed Revisions to the Memorandum of Coverage for the 2018/19 Program Year, Effective January 1, 2019

Ms. Jennifer Jobe, Executive Director, advised in response to the #MeToo movement, a number of bills intended to protect employees from workplace harassment and retaliation under the Fair Employment Housing Act took effect January 1, 2019. At staff’s request, Mr. Greg O’Dea, Board Counsel, reviewed the ERMA Memorandum of Coverage (MOC) for the 2018/19 Program Year and provided recommended changes to the MOC with a retroactive effective date of January 1, 2019.

Mr. O’Dea reviewed his proposed revisions to the MOC as follows:

Revisions to address SB 1300 expansion of liability

SB 1300 expands employer liability to include any form of harassment caused by non-employees. The expansion of liability means that persons providing services pursuant to a contract can also bring claims for any form of harassment caused by nonemployees.

1) Section II, 8. “Employee”

The current language in the MOC limits coverage to only sexual harassment claims brought by persons providing services pursuant to a contract.

To address the gap in ERMA coverage, Mr. O’Dea proposed removing the word “sexual” from the exclusion for independent contractors in this section of the MOC to read, “*The exclusion of independent contractors or subcontractors from the definition of Employee shall not apply to a Claim for harassment...*”

2) Section II, “Harassment”- removing “by a *Covered Party*” from sections 9.A.(3). and 9.B.

The existing definition of *Harassment* in the MOC limits coverage to harassment caused by *Covered Parties* only, and does not address coverage for the liability of the member for harassment caused by nonemployees. Mr. O’Dea proposed modifying 9.A.(3). to read, “create a work environment that interferes with performance...”

Additionally, he recommended modifying section 9.B. to read, “Workplace conduct (i.e. *Harassment* of a non-sexual nature) committed in violation of law...”

In regards to SB 224, Mr. O’Dea recommended against making any revisions to the MOC to address the change to civil code 51.9. He advised the amendment of Civil Code section 51.9 expands the list of professional relationships where liability for sexual harassment can arise to include elected officials. This expansion exposes elected officials to liability for sexual harassment having no relationship to the workplace, that is, section 51.9 provides for liability for claims brought by members of the public who are not employees of the Member.

Under the ERMA MOC, coverage is provided to elected officials for *Claims* brought by *Employees*, provided the official is acting in an official capacity for or on behalf of the Member. Mr. O’Dea advised expanding coverage to encompass non-workplace related sexual harassment claims by citizens is an extension of coverage beyond the parameters of employment practices coverage that ERMA provides.

**Truc Dever moved to approve the proposed revisions to the Memorandum of Coverage for the 2018/19 Program Year, effective January 1, 2019. Seconded by John Gillison. A roll call vote was taken. The motion passed unanimously.**

5. CLOSING COMMENTS

A. Coverage Committee

None.

B. Staff

None.

6. ADJOURNMENT

The January 14, 2019, ERMA Coverage Committee meeting adjourned at 2:21 p.m. by general consent.

  
\_\_\_\_\_  
Jennifer Jobe, Executive Director

**COVERAGE MATTERS**

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

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**BACKGROUND AND STATUS:**

In an effort to ensure clarity and continuity of ERMA's governing documents, staff, along with Doug Alliston, Board Counsel, prepared the attached recommended changes to the Memorandum of Coverage for the 2020/21 Program Year, effective July 1, 2020.

Mr. Alliston will present the recommended changes and answer any questions from the Committee.

**RECOMMENDATION:**

*Staff recommends the Committee consider the proposed revisions to the Memorandum of Coverage for the 2020/21 Program Year, effective July 1, 2020.*

**REFERENCE MATERIAL ATTACHED:**

- Proposed Revisions to the Memorandum of Coverage for the 2020/21 Program Year

**EMPLOYMENT RISK MANAGEMENT AUTHORITY**

**(ERMA)**

**MEMORANDUM OF COVERAGE**

FOR THE 20~~19~~/20/21 PROGRAM YEAR

EFFECTIVE JULY 1, 20~~19~~20

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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* ~~these sums~~ on behalf of the *Covered Party* ~~for the *Ultimate Net Loss, less the Retained Limit*, that the *Covered Party* becomes legally obligated to pay as *Damages* [DA1] because of due to a *Claim* against the *Covered Party* because of a *Wrongful Employment Practice*, as that term is herein defined and to which this Memorandum applies, caused by an *Occurrence* [DA2] ~~during the *Coverage Period*~~, 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 that an *Employee* of the *Covered Party* alleges injury, harm, or invasion of rights due to a *Wrongful Employment Practice (Wrongful Termination, Discrimination, Harassment, Retaliation, or Workplace Tort)* or a series of *Wrongful Employment Practices*. *“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.*~~

*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 written demand or 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.

4 "Covered Party" means:

(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

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

- 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 an act, policy, or course of conduct by a *Covered Party* during the *Coverage Period* which results in a *Claim* for *Wrongful Employment Practice* during the *Coverage Period* if the first act, policy or course of conduct occurred during the *Coverage Period*.

All allegations by the same *Employee* in the same *Claim* shall be considered one *Occurrence* for the purpose of the *Limit of Coverage*, and such *Occurrence* shall be deemed to exist on the date of the alleged first act, policy, or conduct, in the event of an allegation of multiple acts, policies, or course of conduct.

Regardless of the number of *Covered Parties*, all *Claims* by all *Employees* arising from the same act, policy, or course of conduct shall be considered as one *Occurrence* for the purpose of the *Limit of Coverage*.

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.
- ~~11.~~
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.

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:

(1) 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.

(-)

~~strongly disfavored, since the Covered Party is responsible for understanding the definition of a Claim and adhering to the reporting requirements set forth herein.~~

- ~~(3)~~(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.
- ~~(4)~~(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 *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.

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) c a l e n d a r 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) c a l e n d a r 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. 7/1/2019~~20~~, forms a part of ERMA 2019~~20~~-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)

<b>COVERED PARTY</b>	<b>RETENTION</b>
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)

<b>COVERED PARTY</b>	<b>RETENTION</b>
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 <sup>[JJ3]</sup>
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)

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

Monterey Bay Area Self Insurance Authority (MBASIA)

<b>COVERED PARTY</b>	<b>RETENTION</b>
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)

<b>COVERED PARTY</b>	<b>RETENTION</b>
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 Pacific Grove	\$50,000
City of Placentia	\$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 <sub>[JJ4]</sub>
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)

<b>COVERED PARTY</b>	<b>RETENTION</b>
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
<a href="#"><u>City of Rancho Mirage</u></a>	<a href="#"><u>\$50,000</u></a>
San Diego Regional Training Center	\$25,000
City of San Jacinto	\$25,000
City of Stanton	\$25,000
SunLine Transit Agency	\$50,000
Victor Valley Transit Authority	\$25,000
City of Victorville	\$25,000



Small Cities Organized Risk Effort (SCORE)

<b>COVERED PARTY</b>	<b>RETENTION</b>
City of Biggs	\$25,000
City of Colfax	\$25,000
<u>City of Dunsmuir</u>	<u>\$25,000</u>
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 Fort Jones	\$25,000
Town of Loomis	\$25,000
City of Weed	\$100,000
City of Yreka	\$25,000

Vector Control Joint Powers Agency (VCJPA)

<b>COVERED PARTY</b>	<b>RETENTION</b>
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

<b>COVERED PARTY</b>	<b>RETENTION</b>
Oakland Housing Authority	\$50,000
Contra Costa County Housing Authority	\$50,000

Effective Date: July 1, 2019

Endorsement No.: 1

AUTHORIZED REPRESENTATIVE

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

This endorsement, effective 12:01 a.m. 7/1/2019~~20~~, forms a part of ERMA 2019~~20~~-1EPL.

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)  
Public Agency Risk Sharing Authority of California (PARSAC)  
Public Entity Risk Management Authority (PERMA)  
Monterey Bay Area Self Insurance Authority (MBASIA)  
Municipal Pooling Authority (MPA)  
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~~19~~

Endorsement No.: 2

AUTHORIZED REPRESENTATIVE

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

This endorsement, effective 12:01 a.m. 7/1/201920, forms a part of ERMA 201920-1EPL.

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
<u>City of Dunsmuir</u>	<u>\$25,000</u>
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 Fort Jones	\$25,000
Town of Loomis	\$25,000
City of Weed	\$100,000
City of Yreka	\$25,000

Effective Date: July 1, 201920

Endorsement No.: 3

AUTHORIZED REPRESENTATIVE



**COVERAGE MATTERS**

**SUBJECT: Review of Proposed Revisions to the Master Program Document for the 2020/21 Program Year, Effective July 1, 2020**

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**BACKGROUND AND STATUS:**

In an effort to ensure clarity and continuity of ERMA's governing documents, staff, along with Doug Alliston, Board Counsel, prepared the attached recommended changes to the Memorandum of Coverage for the 2020/21 Program Year, effective July 1, 2020.

Mr. Alliston will present the recommended changes and answer any questions from the Committee.

**RECOMMENDATION:**

*Staff recommends the Committee consider the proposed revisions to the Master Program Document for the 2020/21 Program Year, effective July 1, 2020.*

**REFERENCE MATERIAL ATTACHED:**

- Proposed Revisions to the Master Program Document, effective July 1, 2020

**EMPLOYMENT RISK MANAGEMENT AUTHORITY**

**(ERMA)**

**MASTER PROGRAM DOCUMENT**

**FOR THE**

**POOLED EMPLOYMENT PRACTICES LIABILITY PROGRAM**

**(PEPLP)**

**AS AMENDED EFFECTIVE JULY 1, ~~2019~~2020**

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# EMPLOYMENT RISK MANAGEMENT AUTHORITY

## MASTER PROGRAM DOCUMENT

### FOR THE

### POOLED EMPLOYMENT PRACTICES LIABILITY PROGRAM

### (PEPLP)

## ARTICLE I - GENERAL

### A. PURPOSE

1. The primary purpose in forming the Employment Risk Management Authority, hereinafter *ERMA*, is to create a method for providing coverage for legal damages incurred by the *Members* because of *Wrongful Employment Practices*. The Joint Exercise of Powers Agreement and the Bylaws have been created and duly approved to provide the *Members* with this coverage. This *Master Program Document*, hereinafter the MPD, for the Pooled Employment Practices Liability Program, hereinafter the PEPLP, sets forth the manner in which these services shall be delivered to the membership. In the event of a conflict among these governing documents, the Joint Exercise of Powers Agreement controls over the Bylaws, and the Bylaws control over this MPD.
2. The PEPLP shall use pooled sharing of operating costs and losses above the *Members' Retained Limits*. The PEPLP may purchase excess coverage or reinsurance above those limits provided by ERMA.
3. The PEPLP shall provide various *Retained Limits* from which the *Members* may choose, subject to the approval of the *Board of Directors*.
4. The *Board of Directors* has the right to alter the terms and conditions of the pooled underlying coverage in response to the needs and abilities of the PEPLP, the *Members*, and the availability of coverage from outside sources.
5. A summary of the *Limits of Coverage* and *Retained Limits* provided in *Program Years* is set forth in Appendix B.

### B. PROGRAM YEARS

1. A *Program Year* shall be defined as the losses incurred during the period from 12:01 a.m. Pacific time on July 1st of each year to 12:00am Pacific time on June 30th of the following year. The income and expenses of each *Program Year* shall be accounted separately from any other *Program Year's*

income or expenses.

2. The PEPLP shall charge a *Deposit Premium* to each *Member* at inception of each *Program Year* to fund the cost of losses and expenses anticipated for the life of the *Program Year*. The *Deposit Premium* shall consist of a premium to cover pooled losses, based on an actuarial projection of losses for the year and the exposure of loss presented by each *Member* plus a reasonable margin for contingencies, as well as *administrative expenses* and training expenses based on expected costs.
3. After a *Program Year* is at least five years old, *Retrospective Adjustments* may be made annually, subject to the discretion of the Executive Committee or the *Board*, and subject to criteria set forth in this MPD. The process for determining *Retrospective Adjustments* is set forth in Appendix A.
4. A *Program Year* cannot be completed until all *Claims* incurred during that *Program Year* are closed and it is probable that no new *Claims* for that *Program Year* will be made. The *Program Year* shall remain open until the *Board of Directors* authorizes closure based on its determination that known *Claims* for the year are closed, and no further *Claims* will be made.
5. To maintain the actuarial soundness of the PEPLP, the *Board of Directors* shall have actuarial studies done periodically and shall take appropriate action, as set forth in Article III – Premiums, Rates and *Assessments*, if a *Program Year* is found to be actuarially deficient.

## C. FINANCING THE PROGRAM

### 1. DEPOSIT PREMIUMS

*Deposit Premiums* shall be established as set forth in Article III.A.1.

### 2. CAPITAL CONTRIBUTION

In addition to the *Deposit Premium*, in ERMA's early years, each *Member* was required to make a capital contribution annually for the first five years of participation, which equated to 15% of loss funding premium collected, to provide a margin for greater confidence in the program and to build a fund that could be used for program years in need. The capital contribution was equal to the *Board*-approved capitalization rate per \$100 of payroll and was paid over a five-year period. All original funds have been allocated.

The capital contribution fund was reactivated in 2014 to receive funds dedicated to future training initiatives.

Capital contributions will not be dedicated to any one specific *Program Year*, but will be considered when determining the overall actuarial soundness of the PEPLP. The capital contribution amounts will be maintained in a separate equity account and will be returned in the same proportion as the return of other equity at the discretion of the *Board of Directors*. Capital contributions may be applied at the discretion of the *Board of Directors* to any *Program Year*.

### 3. BONDS OR DEBT INSTRUMENTS

- (a) Bonds or other debt instruments may be used to fund one or more *Program Years*. However, *Members* shall be responsible only for the retirement of such debt for the *Program Years* in which they participate. Such retirement of debt shall be calculated into the rates and deposit premiums.
- (b) Upon a two-thirds vote of the *Board of Directors*, debt financing can be authorized for any legal purpose; however, any debt so incurred shall be the debt of *ERMA* and not the debt of any *Member*, unless each *Member*, in writing, authorizes the debt and accepts responsibility for its payment.
- (c) Any monies collected or earned by *ERMA* may be used to retire such debts.

### 4. ASSESSMENTS

*Assessments* may be made at the discretion of the *Board of Directors*, when the PEPLP, as a whole, is found to be actuarially unsound. *Assessments* shall be determined as set forth in Article III, C. 2.

## D. AMENDMENTS TO THIS MASTER PROGRAM DOCUMENT

- 1. This MPD may be amended by a two-thirds vote of the Executive Committee or *Board of Directors*, provided prior written notice has been given to the *Members*.
- 2. The *Members* may repeal such amendments by a majority vote at the next regular or special meeting of the *Board* after the effective date of the amendment.

## ARTICLE II - COVERAGE

### A. GENERAL DESCRIPTION

#### 1. COVERAGE PROVIDED

- (a) The Memorandum of Coverage, and any endorsements thereto, shall provide the terms, conditions, limitations and exclusions for the defense and indemnification of covered parties, as defined, for liability because of

*Wrongful Employment Practices.* The Memorandum of Coverage shall be reviewed annually and approved by the *Board of Directors*.

- (b) An account shall be established from which losses and expenses of the PEPLP shall be paid. Although the intent of the PEPLP is to provide pooled coverage, coverage may be obtained, either partly or wholly, from commercial insurance or reinsurance if it is to the financial advantage of the PEPLP as determined by the *Board of Directors*. In making its determination, the *Board* shall consider the objectives of security, minimizing costs to the PEPLP, and the desire of the *Members* for a particular type of coverage. Any such commercial insurance shall have an A.M. Best Rating Classification of A or better and an A.M. Best Financial Rating of VII or better, or their equivalents.

## 2. LIMITS OF COVERAGE

- (a) The PEPLP shall provide, where economically practical, *Limits of Coverage* of at least \$2,000,000 per occurrence.
- (b) The *Board of Directors* may authorize choices of limits less than \$1,000,000 by the *Members*.

## 3. RETAINED LIMITS

- (a) The pooled coverage shall be excess of the *Retained Limits* as recommended by the Administrator, chosen by each *Member*, and approved by the *Board of Directors*. The Administrator shall consider, among other factors, the financial needs of the *Members* when establishing the choices of *Retained Limits*. The *Board of Directors* may alter the choices of *Retained Limits*, increase *Retained Limits* for *Members* which do not substantially comply with elements of the PEPLP, and institute Aggregate Stop Loss coverage, as described below, or other forms of retentions as the financial strength of the PEPLP dictates.
- (b) The *Board of Directors* may offer annual aggregate limitations to the repeated cost of the *Retained Limit* payments by a *Member* in any *Program Year*. This form of coverage shall be called Aggregate Stop Loss and is further defined in Article II, A, 3, (b).
- (c) A participating *Member* may elect to change its *Retained Limit* after its first year in the program, but any request to lower a *Retained Limit* is effective only with approval of the *Board of Directors*. Any change in the *Retained Limit* shall be for a complete *Program Year* and must be received by the *Board of Directors* at least thirty (30) days prior to the inception of the new *Program Year* in which the change is to be effective.



The *Board of Directors* may require a *Member* to increase its *Retained Limit* at the inception of a new *Program Year* by providing written notice of such change to the *Member* at least sixty (60) days prior to the increase.

- (d) Each *Member* shall bear the costs of its *Claims*, including defense and related costs, including but not limited to attorneys' fees, investigation costs, expert costs, vendor costs and any other related costs up to the amount of its *Retained Limit*. This expense shall be borne by the individual *Member* to the extent such costs are not limited by an *Aggregate Stop Loss*. *Members* shall report all payments made within their *Retained Limits* to ERMA to ensure efficient claims control and actuarial analysis.

#### 4. COVERAGE TERM, RENEWAL, AND CANCELLATION

The coverage term shall be the same period of time as the *Program Year*. Cancellation of coverage by withdrawal of a *Member* shall be permitted only at the end of any *Program Year*. The timing of cancellation of coverage by expulsion of a *Member* shall be as determined by the *Board of Directors*.

### B. MEMORANDUM OF COVERAGE

- 1. The President shall appoint a Coverage Committee, which may consist of up to three (3) members of the *Board of Directors*. The members of the Committee shall remain as members until such time as the President relieves them of their duties. Each year, prior to the last *Board of Directors* meeting of the *Program Year*, the Committee shall review, as necessary, the Memorandum of Coverage and recommend changes, where appropriate, for the next *Program Year*. The Committee shall consider the desires of the *Members* for coverage as well as the financial impact such coverage may have on the PEPLP. The *Board of Directors* shall evaluate and, if appropriate, approve the recommendations of the Committee and adopt the Memorandum of Coverage for the next *Program Year* prior to or at the last regular or special meeting of the expiring *Program Year*.
- 2. The *Board of Directors* shall evaluate and, if appropriate, approve the recommendations of the Committee and adopt the Memorandum of Coverage for the next *Program Year* prior to or at the last regular or special meeting of the expiring *Program Year*.
- 3. Notwithstanding Section B.1., above, the *Board of Directors* may, from time to time, amend the coverage provided in the Memorandum of Coverage, purchase excess insurance or reinsurance, or participate in other pooling arrangements authorized by the Government Code, based on the needs of the PEPLP and the *Members*, costs, funding, available insurance, and other relevant factors.

C. DISTRIBUTION

A copy of this MPD and the current Memorandum of Coverage shall be provided to each *Member* in each year that changes are adopted. All endorsements or other changes to the PEPLP shall be distributed to the *Members as made*. All documents shall be deemed to be provided to the *Member* if the representative for the *Member* personally receives a copy of such document, if the document has been duly mailed in the U.S. Postal system, or if the document is posted to the official ERMA website and notice thereof has been mailed in the U.S. Postal system or sent via email to the *Member*.

**ARTICLE III - PREMIUMS, RATES AND ASSESSMENTS**

A. ADMINISTRATIVE EXPENSES, TRAINING EXPENSES AND DEPOSIT PREMIUM CALCULATIONS

1. DEPOSIT PREMIUMS

- (a) The Administrator, in conjunction with an actuary, shall annually establish rates and *Deposit Premiums*, subject to *Board* approval, adequate to fund the actuarially determined losses in the pooled layer of the PEPLP, including defense costs and other claims-related expenses, the cost of excess coverage, and the projected administrative costs and training costs, including retirement of debt, if any, of the PEPLP.
- (b) The annual *Deposit Premium* for each *Member* shall be calculated utilizing (1) the actuarially determined expected losses for the PEPLP, (2) a capital contribution during the first five years of participation equal to or exceeding 15% of the amount needed to cover defense and indemnity (if applicable – required in ERMA’s early years, but not currently applied), (3) a charge for excess insurance or reinsurance, if any, (4) a charge for the *Administrative Expense* of the PEPLP, and (5) a charge for the Training Expense of the PEPLP as determined by the Administrator.
- (c) The *Administrative Expense* charged to each *Member* is calculated by allocating the total *Administrative Expenses* required for the upcoming *Program Year* among the *Members* based on the payroll for each *Member*. This expense may be modified by experience at the discretion of the *Board of Directors*.
- (d) The training expense charged to each *Member* is calculated by allocating the total training expenses required for the upcoming *Program Year* among the *Members* based on the payroll for each *Member*. This expense may be

modified by experience at the discretion of the *Board of Directors*.

- (e) Payroll as of December 31<sup>st</sup> of the year preceding the commencement date of a new *Program Year*, inflated by no more than 5%, will be utilized in determining the *Deposit Premium* calculation. Payroll shall be submitted for the four calendar year quarters using reported payroll on DE-9C payroll reports by February 15<sup>th</sup> of the new program year.

## 2. EXPERIENCE MODIFICATION

- (a) Each Member may be evaluated each year for an experience modification credit or debit based on no more than the past six years of experience. At the discretion of the Board of Directors, all or a portion of the six years of experience may be used in the calculation of the experience modification factor.
- (b) The calculation of the credit or debit shall include the actual loss experience of each individual *Member* as it relates to the average loss experience of the group as a whole. The criteria which shall be used is the relationship of actual average loss experience over the period being rated as it relates to the average payroll for the same period.
- (c) The Board has the discretion to apply a credibility factor and to establish upper and lower limitations on the maximum and minimum experience modifications.

## 3. PROGRAM ADMINISTRATIVE BUDGET

Each *Program Year* shall have its own administrative budget to cover the costs of operating and maintaining the administrative functions of the PEPLP for that year. This budget shall include, but not be limited to, the following expenses:

- (a) Financial and claims auditing;
- (b) Program management services;
- (c) Legal services;
- (d) Claims adjusting for *Claims* which exceed the *Retained Limits*;
- (e) Actuarial services;
- (f) Insurance expense;
- (g) Investment and banking fees;
- (h) The cost of administrative materials; and

- (i) A provision for other minor miscellaneous costs.

#### 4. PROGRAM TRAINING BUDGET

Each *Program Year* shall have its own training budget which shall cover the costs of operating and maintaining the training and loss control functions of the PEPLP for that year. This budget shall include, but not be limited to, the following expenses:

- (a) Costs for training workshops and loss prevention programs;
- (b) Costs for employment related legal assistance; and
- (c) Costs for compliance auditing for (a) and (b) above, if deemed necessary.

#### B. UNDERWRITING CREDITS/DEBITS

The *Board of Directors*, at its discretion, may impose credits or debits where warranted because of some inequity that would otherwise be encountered.

#### C. ADJUSTMENTS TO ACCOUNT BALANCES

##### 1. ESTABLISHMENT OF THE LEVEL OF FUNDING

- (a) The confidence level used for determining the funding requirements of the PEPLP and the *Program Year Deposit Premiums* will be determined by the Administrator and approved by the *Board of Directors*; however, the confidence level shall not be lower than 70 percent or the amount needed to cover expected losses.
- (b) Interest rates for the type of investments utilized by the PEPLP may be used to determine the amount of funds necessary to meet the selected confidence level for the PEPLP, but, such interest rate shall not exceed seven percent.
- (c) Reserves for each *Program Year* shall be actuarially determined and shall be sufficient to maintain the overall funding to meet the approved confidence level.

##### 2. ASSESSMENTS

- (a) When a *Program Year* is actuarially unsound, the Administrator, with the assistance of an actuary, will determine to what extent, if any, the PEPLP as a whole is not *actuarially sound*.
- (b) The PEPLP is not *actuarially sound* when the available reasonably estimable

reserves are less than the amount of reserves required at the expected confidence level, including expected interest earnings. Reserves are reasonably estimable on a *Program Year* when it is at least three years old.

- (c) If the PEPLP is not *actuarially sound*, the *Board of Directors* may, at its discretion, impose an *Assessment* against all *Members* participating in the deficient *Program Year(s)*. Each *Member's Assessment* shall be determined by the proportion which that *Member's Deposit Premium* for that year relates to the total *Deposit Premium* paid by all *Members* for that year.
- (d) If the PEPLP as a whole is *actuarially sound*, the *Board of Directors* may, at its sole discretion, assess the *Members* who participated in any *Program Year* that is not *actuarially sound*.
- (e) A program year or years that are not *actuarially sound* will be adjusted annually with the Retrospective Adjustment Process discussed in the next section.

### 3. RETROSPECTIVE ADJUSTMENTS

The Retrospective Adjustment Process defines the methodology by which program years that are a full five years old are adjusted annually. The Retrospective Adjustment Process is defined in ERMA's Financial Stability Plan, as approved by the *Board of Directors*, and appears in its entirety in Appendix A.

### D. CLOSED PROGRAM YEARS

- 1. The *Board of Directors* may close a *Program Year* as described in Article I, B.
- 2. Upon closure of a *Program Year*, a final calculation of account balances shall be made as described in ERMA's Financial Stability Plan, specifically the Retrospective Adjustment Process, and found in Appendix A. The account balances shall be returned to the *Members* at the discretion of the *Board of Directors* based on the percentage of *Deposit Premium* paid by each *Member* for that *Program Year*.
- 3. The *Board of Directors* retains the right to assess *Members* which participated in a closed *Program Year* if such *Program Year* incurs additional expenses after closure.

## ARTICLE IV - ADMINISTRATION

### A. ORGANIZATION AND RESPONSIBILITIES

#### 1. RELATION TO ERMA STRUCTURE

- (a) This MPD supplements the Bylaws. In the event of a conflict between the Bylaws and this MPD, the Bylaws control. From time to time, resolutions of the Executive Committee or *Board of Directors* may be adopted which may take precedence over this MPD for a limited period of time; however, any change thus enacted by resolution that is intended to last beyond six months shall be expressly incorporated into and amend this MPD.
- (b) The Administrator shall be the Program Administrator for the PEPLP and shall report to the Executive Committee or *Board of Directors* of *ERMA*.
- (c) A Litigation Manager shall be selected by the Program Administrator and approved by the *Board of Directors* to supervise the handling of *Claims* and report to the Program Administrator and the *Board of Directors*, as requested by the *Board*.

## 2. *BOARD OF DIRECTORS*' RESPONSIBILITIES

- (a) The *Board of Directors* shall meet at least one (1) time per year to review the developments and performance of this PEPLP as part of a general or special *Board of Directors* meeting.
- (b) The *Board of Directors* may delegate to the Executive Committee any of its responsibilities not otherwise reserved to the Board in the Joint Exercise of Powers Agreement or Bylaws.
- (c) The *Board of Directors* shall review and have authority to override all decisions made by the Executive Committee.

## 3. EXECUTIVE COMMITTEE RESPONSIBILITIES

An Executive Committee may be established and, if so, shall have the following duties with respect to the PEPLP:

- (a) Direct proposals for outside service contracts including, but not limited to, program administration, claims adjusting, actuarial services, and financial and claims audit services.
- (b) Supervise the management of claims including, but not limited to, the review of loss reserves and claims expenses.
- (c) Provide policy and guidance to the Litigation Manager with regard to management of specific claims where the Litigation Manager requests such direction or where he or she lacks authority to establish such policy.
- (d) Settle any claim equal to or less than the limit of coverage for *ERMA*.

However, such authority shall only apply to those claims for which the Ultimate Net Loss is in excess of the settlement authority given to the Litigation Manager and above the *Retained Limit* of the *Member*.

- (e) Hear all disputes regarding the selection of defense counsel on a particular case brought to it by the *Member* for which such defense counsel was chosen.

#### 4. ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES

##### (a) GENERAL

- (i) The Program Administrator shall use his or her best efforts to administer the PEPLP so as to achieve the objectives and goals of the PEPLP and *ERMA*.
- (ii) The Program Administrator shall administer the PEPLP in a manner that will provide claim and cost accountability for each *Program Year*, separate and apart from all other *Program Years*, and from other programs of *ERMA*.

##### (b) CLAIMS ADMINISTRATION

The Program Administrator shall:

- (i) Resolve disputes between a *Member* and the Litigation Manager, Claims Adjustor or Investigator;
- (ii) Prepare an annual report showing claims activity, paid claims, case reserves, *obligated reserves*, and status of pooled funds of each *Program Year* for each *Member*;
- (iii) Obtain the services of a claims auditor and present the findings to the Executive Committee or *Board of Directors*, if the cost of these services is within the approved annual budget; and
- (iv) Coordinate with the Litigation Manager, whose duties are outlined in Section 5, Litigation Manager.

##### (c) FINANCIAL DUTIES

The Program Administrator shall:

- (i) Prepare a budget for each *Program Year* for approval by the *Board of Directors* before the beginning of the *Program Year*;
- (ii) Prepare an annual report comparing each *Program Year's* budgeted to actual expenditures;

- (iii) Ensure that *Retrospective Adjustments* for previous *Program Years* and rates and *Deposit Premiums* for each new *Program Year* are calculated in the manner described in Article III;
- (iv) Obtain actuarial services and present the findings to the Executive Committee or *Board of Directors*, provided the cost of such services is within the approved annual budget;
- (v) Evaluate and present to the Executive Committee or *Board of Directors* the recommendations of the actuarial studies with recommended actions where *Program Years* are, or are likely to be, actuarially unsound in the near future;
- (vi) Engage the services of an independent financial auditor selected by the Executive Committee or *Board of Directors* and present the findings to the Executive Committee or *Board of Directors*, provided the cost of these services is within the approved annual budget; and
- (vii) Present financial audits to the Executive Committee or *Board of Directors*.

(d) ACCOUNTING RESPONSIBILITIES

The Program Administrator shall:

- (i) Invoice *Member Entities* for *Deposit Premiums* and other amounts due;
- (ii) Report to the Executive Committee or *Board of Directors* any invoices not paid and outstanding for more than thirty (30) days;
- (iii) Prepare vouchers, invoices, or other demands for payment for approval by the President and, upon approval, submit the demands to the Treasurer for payment;
- (iv) Maintain detailed financial records of all income, expenses, cash deposits, and withdrawals;
- (v) Maintain financial records according to generally accepted accounting principles; and
- (vi) Present timely quarterly and annual financial statements to the Executive Committee or *Board of Directors*.



(e) LOSS CONTROL SERVICES/TRAINING/COMPLIANCE AUDIT

The Program Administrator shall:

- (i) Assist the *Members* in the evaluation of their employment related policies, practices and procedures regarding exposures that may result in claims, and report the evaluations to the Executive Committee or *Board of Directors*;
- (ii) Recommend to the Executive Committee or *Board of Directors* loss control and training programs for adoption;
- (iii) Assist the *Members* in establishing loss control programs and training programs;
- (iv) Evaluate the efficiency of the loss control and training programs and report such findings to the Executive Committee or *Board of Directors*; and
- (v) Establish compliance auditing standards to ensure participation in the established loss control and training programs adopted by the *Board of Directors* or Executive Committee.

5. LITIGATION MANAGER

The Litigation Manager shall:

- (a) Oversee, generally, all liability claims administration and management, supervise the daily operations of handling *claims* for the PEPLP, and report to the Program Administrator on such operations.
- (b) Have the authority to settle any claim with an Ultimate Net Loss, as defined in the Memorandum of Coverage applicable to that claim, equal to or less than one hundred thousand dollars (\$100,000), per claimant, in excess of the *Retained Limit* of the *Member* involved.
- (c) Assist the Program Administrator in the selection of an approved defense counsel, claims adjusting, loss prevention and investigation services, if those services are required, including evaluation of quality and price of services in the defense, claims handling, investigation and reporting services;
- (d) Oversee performance of the approved defense counsel, claims adjustor, and loss prevention and investigation services, with special emphasis on the handling of open claims, including:
  - (i) review all open claims valued in excess of 50 percent of the

- individual *Member's Retained Limit* and, if necessary, recommend action on such claims;
- (ii) Review all open claims in which an outside investigator has been retained by the *Member* or *ERMA*, and
  - (iii) Review monthly claims reports and relate to the Executive Committee or *Board of Directors* any significant trends that may be developing.
- (e) Assist the Program Administrator in presenting claims audits to the Executive Committee or *Board of Directors*, with recommendations of changes in claims procedures where appropriate.
  - (f) Perform a quarterly review of claims files including new claims likely to exceed 50 percent of the *Member's Retained Limit*, claims in which an outside investigator has been retained by the *Member* or *ERMA*, and those claims for which a *Member*, the Executive Committee, or the *Board of Directors* has requested a specific review;
  - (g) Review, at least quarterly, all open claims in excess of the involved *Member's Retained Limit* and, if necessary, recommend action on such claims;
  - (h) Report to the Executive Committee or *Board of Directors* at each meeting, summarizing the active claims of general interest to the *Members* and claims for which a *Member*, the Executive Committee, or the *Board of Directors* has specifically requested a review;
  - (i) Assist the *Members* in training their personnel in the correct procedures for response to employees and reporting of incidents or claims
  - (j) Advise, where needed, on the setting and changing of reserves for claims;
  - (k) Report to any excess insurance or reinsurance obtained by ERMA all claims that meet the reporting requirements of such excess insurance or reinsurance;
  - (l) For those *Members* with excess insurance or reinsurance other than that obtained by ERMA, provide notice to the *Member* in the acknowledgement of the claim that the claim may need to be reported to the *Member's excess* insurance or reinsurance, and suggest the *Member* check the reporting requirements of any such excess carrier or reinsurance; and provide notice to the *Member* and its pool administrator, if any, when the claim has reached 50 percent of the ERMA layer.

- (m) Ensure that the *Member* is advised of ERMA's coverage position on a claim as soon as practicable.
- (n) Monitor and evaluate the effectiveness of the defense firms:
- (o) Advise the Board on recommendations for settlement of claims in excess of \$100,000.00;
- (p) Answer inquiries from *Members* regarding claims or procedures;
- (q) Establish a list of attorneys who have demonstrated proficiency in defending employment actions against public agencies;
- (r) After consultation with the *Member* as set forth in Article VI F, select defense counsel, if needed, for each claim where the Ultimate Net Loss, as defined in the Memorandum of Coverage, is at least 50 percent of the involved *Member's Retained Limit*;
- (s) Review the performance of the claims adjuster or investigator's personnel assigned to *ERMA's* account with special emphasis in the handling of open claims;
- (t) Advise and assist the Program Administrator in the selection of claims adjusting and investigation providers/companies;
- ~~(u) Determine, [consistent with the requirements of the Memorandum of Coverage and using reasonable discretion](#) and based on the particular facts and circumstances, whether a claim has been timely reported to *ERMA* as a condition precedent to coverage under the Memorandum of Coverage; [provided, however, the Litigation Manager shall have no discretion to accept as timely any of the following claims reported after 30 days: 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 Litigation Manager's decision may be appealed to the Board of Directors;](#)~~
- (v) Annually provide to the Executive Committee or *Board of Directors* a review and evaluation of all panel defense counsel, including performance and costs; and
- (w) Provide other services as may reasonably be requested by the *Member*, Executive Committee or the *Board of Directors*.

## B. REPORTS AND SCHEDULES

### 1. FINANCIAL REPORTS

- (a) Unaudited, annual financial statements shall be presented to the Executive Committee or *Board of Directors* within 150 days after the end of the fiscal year. These reports will include:
  - (i) A balance sheet,
  - (ii) An income statement, and
  - (iii) A statement of account balances for each *Program Year* by *Member*.
- (b) Unaudited, quarterly financial statements shall be presented to the Executive Committee or *Board of Directors* within 60 days after the end of the quarter. These reports will include a balance sheet and income statement.
- (c) A signed audited financial statement for the *Program Year* shall be presented to the Executive Committee or *Board of Directors* within 150 days after the end of the *Program Year*.

### 2. CLAIMS REPORTS

- (a) Quarterly claims reports shall be presented to the *Members* within 30 days after the end of the quarter. These reports will include:
  - (i) Status of each claim by *Program Year* including case reserves, allocated claims reserves, amounts paid for indemnity, and allocated claims expense; and
  - (ii) Summary of number of claims, total claims reserves, and total paid expenses by *Program Year* for each *Member*.
- (b) Special reports shall be prepared when reasonably requested by the Executive Committee or *Board of Directors*.
- (c) A claims audit report shall be obtained at least every other year, including a statement of adequacy of claims procedures and accuracy of the claims data.

### 3. ACTUARIAL STUDIES

- (a) An actuarial report shall be obtained as determined by the Executive Committee or *Board of Directors*, which shall evaluate the adequacy of reserves for each open *Program Year*.

- (b) The actuarial report shall also include loss projections for future *Program Years* based on the experience of the PEPLP.

C. LOSS CONTROL SERVICES/TRAINING/COMPLIANCE AUDITING

*ERMA* will provide loss control services, training, and compliance auditing to the *Members*, as needed, to minimize claims expenses and reduce loss exposures for the PEPLP.

**ARTICLE V - PARTICIPATION**

A. ELIGIBILITY AND APPLICATION

1. ELIGIBILITY

- (a) Only *Members* of ERMA may participate in the PEPLP.
- (b) Each *Member* must initially commit to at least three full *Program Years* of participation in the PEPLP.
- (c) Each prospective *Member* of ERMA must submit an application along with a non-refundable application fee of \$2,500 (prospective *Member* JPA) or \$1,000 (prospective direct *Member*) and provide a completed and signed resolution obligating the prospective *Member* to participate for the required three years and accepting the rules and policies set forth in the PEPLP governing documents. The resolution shall also state the *Retained Limit* desired by the prospective *Member*. The prospective *Member* shall, if practicable, submit five years of wrongful employment practices loss experience, complete an Underwriting Information Sheet, complete an Exposure Analysis Questionnaire, and provide copies of the last four quarterly DE-9C, Federal 941 or J200 payroll reports, if required, or, upon approval of the Executive Committee or *Board of Directors*, the current number of full-time equivalent employees.

For the initial *Program Year* or for latter years at the discretion of the *Board of Directors*, the underwriting and submission of data requirements listed above may be waived.

- (d) The prospective *Member* shall provide the application and applicable fee, resolution form, the experience and underwriting information, and the DE-9C, Federal 941 or J200 payroll information at least 60 days prior to the inception of the *Program Year* in which its participation will commence, or on which it desires coverage to commence.

- (e) Those *Members* affiliated with a primary JPA shall be provided extended coverage under the Memorandum of Coverage for their primary JPA's Board of Directors and JPA employees, provided at least 50%, by payroll, of that primary JPA's members participate in *ERMA* and/or 50% of the primary JPA's total members participate in *ERMA*. This coverage shall be added by endorsement to the Memorandum of Coverage.

## 2. APPROVAL OF APPLICATION

- (a) An Underwriting Committee, appointed by the President, shall review the membership application and other underwriting and experience criteria of the prospective *Member*. The Underwriting Committee shall make a recommendation to the Executive Committee or *Board of Directors* regarding approval of the prospective *Member*.
- (b) The Executive Committee or *Board of Directors* shall, from a review of the membership application, other underwriting and experience criteria, and the advice of the Underwriting Committee and Program Administrator, determine the acceptability of the exposures presented by the prospective *Member*.
- (c) The Administrator shall advise the prospective *Member*, in writing, of the decision of the Executive Committee or *Board of Directors* within 15 business days after the decision.

## 3. DATE OF MEMBERSHIP

It is preferable that a new *Member* enter the PEPLP at the commencement of a *Program Year*. If the new *Member* enters at any other time, the *Deposit Premium* may be prorated for the remainder of the *Program Year*, and covered losses of the new *Member* which occur on or after the date of membership will be paid; however, the new *Member* shall be required to share losses for the pool for the entire year, just as if it had begun its membership at the commencement of the *Program Year*.

## 4. APPLICATION FEE CREDIT

Following completion of the first *Program Year*, the *Member* will receive a credit in an amount equal to the fee remitted upon application for membership. This will be issued in the form of a premium credit, applicable to the *Members'* second year *Deposit Premium*.

B. MEMBERS' DUTIES

1. PROVIDE UNDERWRITING INFORMATION

- (a) Each *Member* shall provide payroll information based on the State DE-9C, Federal 941, or J200 payroll reports, and if practicable provide copies of the DE-9C, Federal 941, or J200 payroll reports quarterly within fifteen days after filing with the State or Federal Government; or upon approval of the Executive Committee or *Board of Directors*, provide the full-time equivalent number of employees for the *Member* on an annual basis.
- (b) Each *Member* shall cooperate with *ERMA* in the claims management, loss control, training, underwriting, and actuarial activities of *ERMA*.

2. PAYMENT OF PREMIUMS AND OTHER CHARGES

- (a) Each year, no later than July 1<sup>st</sup>, *ERMA* shall bill each *Member* its *Deposit Premium* for the next *Program Year*. The annual billing shall be due and payable on July 15<sup>th</sup>, and shall be delinquent if not paid on or before the last working day in July.
- (b) A *Member* may be billed an additional amount because of *Assessments* to bring a *Program Year* into a state of actuarial soundness, or amounts due for other items. This billing is due and payable upon receipt, and delinquent if not paid on or before thirty (30) calendar days after receipt. The date of receipt shall be determined as the date the billing was presented in person to a representative of the *Member*, or posting the billing in the U.S. Mail, or the date sent via electronic mail.
- (c) Any *Member* which has formerly participated in the PEPLP, but has withdrawn as a *Member*, shall be required to pay all applicable billings for the *Program Years* in which it participated. Delinquent billings shall be treated in the same manner as set forth above, as if the withdrawn *Member* were still a *Member*.
- (d) The penalties and interest described below will be strictly enforced. *Members* may only use those payment methods specifically approved by the Executive Committee or *Board of Directors*.
- (e) Interest on Delinquent Amounts Due and Payable - Interest shall accrue on all delinquent amounts due and payable to *ERMA* at the rate as prescribed in the Bylaws.
- (f) Failure to Pay Billings, Penalties, or Interest - Failure to pay billings, penalties, or the accrued interest shall be considered grounds for removal of

the *Member* from the PEPLP and may result in the expulsion of the *Member* from *ERMA* according to the *ERMA* Agreement.

- (g) Failure to Pay Defense and Related Costs - Failure to pay defense and related costs including but not limited to attorneys' fees, investigation costs, expert costs, vendor costs and any other related costs incurred within the *Retained Limit* shall be considered grounds for removal of the *Member* from the PEPLP and may result in the expulsion of the *Member* from *ERMA* according to the *ERMA* Agreement
- (h) Penalties for Non-Payment by Former Members - Failure to pay billings, penalties, or accrued interest thereon shall constitute a breach of the agreement between the former *Member* and *ERMA*. The former *Member* shall be liable for the billings, penalties, accrued interest, and all costs incurred by *ERMA* in the enforcement of all provisions set forth in this MPD, the Bylaws, and the Joint Exercise of Powers Agreement.

#### C. DUTY TO REPORT CLAIMS

Timely reporting of claims is essential to efficient claims and litigation management. Failure to timely report any claim, as defined in the Memorandum of Coverage, to *ERMA* may result in denial of that claim or other penalties, as set forth in the Memorandum of Coverage.

#### D. TERMINATION OF PARTICIPATION

1. A *Member* in one *Program Year* shall participate in the next *Program Year* unless, at least six months before the commencement of the next *Program Year*:
  - (a) a written request to terminate participation is received from the *Member*, or
  - (b) a written termination notice from the Executive Committee or *Board of Directors* has been sent to the *Member*.
2. Termination of participation in future *Program Years* does not relieve the terminated *Member* of any benefits or obligations of those *Program Years* in which the *Member* participated. These obligations include payment of *Assessments*, *Retrospective Adjustments*, wrap up costs, or any other amounts due and payable.
3. The Executive Committee or *Board of Directors* may terminate future participation by a *Member* for the following reasons:
  - (a) Termination as a *Member* of *ERMA*;
  - (b) Declination to cover the *Member* by the organization, if any, providing excess insurance or reinsurance or pooled excess coverage;



- (c) Nonpayment of past billings, *Assessments, Retrospective Adjustments*, or other charges;
- (d) Habitual late payment of billings, *Assessments, Retrospective Adjustments*, and/or other charges, or habitual late response in submitting data required by *ERMA*;
- (e) Nonpayment or habitual late payment of defense and related costs, including but not limited to attorneys' fees, investigation costs, expert costs, vendor costs and any other related costs that are incurred within the *Retained Limit*;
- (e) Failure to provide underwriting information as defined herein;
- (f) Development of an extraordinarily poor loss history;
- (g) A substantial change in exposures which are not acceptable in the PEPLP;
- (h) Financial impairment, including bankruptcy, which may jeopardize the PEPLP's ability to collect amounts due in the future;
- (i) Failure to comply with loss control services, training, or compliance auditing programs adopted by *ERMA*;
- (j) Conduct detrimental to *ERMA*; and/or
- (k) Termination of the *Member* by its primary joint powers authority.

## **ARTICLE VI - CLAIMS ADMINISTRATION**

### **A. SELECTION OF ADJUSTOR OR INVESTIGATION FIRM**

The *Board of Directors* or Executive Committee shall review proposals for claims adjusting and investigation services, if those services are deemed necessary. The Executive Committee will make recommendations if necessary to the *Board of Directors* regarding the qualifications of the proposals. The adjusting and investigation company shall have the capacity and shall report claims activities in such a manner that the segregated accounting requirement of the PEPLP can be easily administered.

### **B. CLAIMS AUDIT**

1. At least once every two years, the adequacy of claims adjusting shall be examined by an independent auditor who specializes in claims auditing.

2. The Administrator shall obtain the services of a claims auditor and present the findings to the Executive Committee or *Board of Directors*, if the cost of these services is within the approved annual budget.
3. The claims audit report shall address the issues of adequacy of claims procedures and accuracy of claims data.

C. AUTHORITY'S RIGHT AND DUTY TO DEFEND

The Authority's right and duty to defend a claim shall be defined in the Memorandum of Coverage.

D. SETTLEMENT AUTHORITY

1. Each *Member* shall have input with regard to settlement authority for its claims that do not exceed its *Retained Limit*; however, when a claim's incurred costs reach one-half of the *Member's Retained Limit*, or when a *Member* retains an outside investigator to investigate a claim, all information concerning the claim shall be provided to the Litigation Manager. The Litigation Manager shall continue to keep the *Member* fully informed on the progress of the claim, and shall consult with the *Member* regarding any settlement within or above the *Member's Retained Limit*. The *Member* shall fully cooperate in all matters pertaining to the claim.  
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.
2. The Litigation Manager shall have the authority to settle any claim with an Ultimate Net Loss, as defined in the Memorandum of Coverage applicable to that claim, equal to or less than one hundred thousand dollars (\$100,000) in excess of the *Member's Retained Limit*.
3. The Executive Committee or *Board of Directors* shall have the authority to settle any claim in an amount equal to or less than the limit of coverage of *ERMA*. However, such authority shall only apply to those claims whose Ultimate Net Loss is in excess of the settlement authority given to the Litigation Manager and above the *Member's Retained Limit*.

E. DISPUTES REGARDING MANAGEMENT OF A CLAIM

1. Any dispute between a *Member* and the Litigation Manager, claims adjustor or investigator shall be brought to the attention of the Program Administrator who shall attempt to resolve the dispute and/or refer it to the Executive Committee or *Board of Directors*. Any decision by the Program Administrator may be appealed to the

Executive Committee or *Board of Directors*, however, such appeal shall be in writing and shall be made within 30 calendar days of the Program Administrator's decision.

2. Any settlement decision or other decision made by the Litigation Manager may be appealed; however, such appeal shall be in writing to the Executive Committee or *Board of Directors* within 30 calendar days of the date of the Litigation Manager's decision.
3. When an appeal has been filed, the Executive Committee or *Board of Directors* shall hear the appeal within 60 calendar days, or at the next scheduled Executive Committee or *Board of Directors* meeting, whichever is later.

#### F. SELECTION OF DEFENSE COUNSEL

1. A panel of approved defense attorneys shall be proposed by the Litigation Manager, with input from the Members, and approved by the *Board of Directors*. The Executive Committee or *Board of Directors*, at its discretion, may periodically review the panel of defense attorneys and remove or add attorneys to that panel.
2. Nothing in this section shall be construed to limit the right of a *Member* to retain its own defense counsel to represent the *Member* in any litigation. If, however, a *Member* retains counsel other than the counsel assigned by the Litigation Manager, or, in the case of an appeal of the Litigation Manager's decision, a decision by the Board, the *Member* shall be solely responsible for that counsel's attorney's fees and costs, and the *Member* shall be deemed to have waived any rights to defense and indemnity coverage from *ERMA* for that particular litigation.
3. Assignment to defense counsel shall be made from the approved defense panel by the Litigation Manager after consultation with the *Member*. In the event the Litigation Manager assigns the case to a firm or individual other than the one expressly preferred by the *Member*, the Litigation Manager shall advise the *Member* in writing of the reasons for the change, and the *Member* shall have the right to appeal the decision to the *Board of Directors*. The decision of the *Board of Directors* shall be binding and final, with no further right of appeal.
4. Regardless of the selection process, the *Member* shall bear the financial responsibility of all defense expenses, including fees, until such time as its *Retained Limit* is exhausted.

## ARTICLE VII - DEFINITIONS

1. **Actuarially Sound** means that the *Program Year* has sufficient funds to pay the *Administrative Expenses* and the expected cost of *Claims* at a sixty (60) percent confidence level as determined by a certified actuary for the *Program Year*.
2. **Administrative Expenses** means those expenses incurred by the PEPLP that are not incurred due to any specific *Claim* and does not constitute a reserve for future expected changes in the size of existing *Claims* or discovery of previously unknown *Claims*. Administrative Expenses shall include expenses of ERMA that are allocated to the PEPLP.
3. **Assessments** means charges to *Members* in excess of their deposit premiums, which are not part of a *Retrospective Adjustment*, for the purpose of raising sufficient funds to reach an *Actuarially Sound* condition.
4. **Claim** means, if not otherwise defined within the context of the Memorandum of Coverage, to be all demands for compensation by third party claimants against a covered party arising out of one occurrence.
5. **Retrospective Adjustment** means the allocation of funds and liabilities to the accounts of each *Member* for each *Program Year* and the process of returning excess funds, or charging deficiencies of funds, in the accounts of each *Member*.
6. **Limits of Coverage** means the maximum amount of financial protection afforded any *Member* as the result of a single occurrence.
7. **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.
8. **Obligated Reserves** means reserves for expected claims expenses, determined by an actuarial study, not attributable to any known *Claim*. This is sometimes called IBNR.
9. **Program Year** means the period of coverage provided by the Memorandum of Coverage, usually a 12-month period. However, any renewals, by endorsement, for a new term shall constitute a new Program Year.
10. **Open Program Year** means a *Program Year* for which the *Executive Committee or Board of Directors*, due to *Claims* within the *Program Year* that are not finalized and/or the possibility of new *Claims* arising, has not authorized the final *retrospective adjustment*.
11. **Closed Program Year** means a *Program Year* that the *Executive Committee or Board of Directors* has declared closed and for which it has authorized final *retrospective adjustments*.

12. **End of Program Year** means that time when the coverage period of the Memorandum of Coverage lapses.
13. **Retained Limit** means the amount of all *Claims* arising out of one *Occurrence* which will be paid directly by the *Member*.

## APPENDIX A

### RETROSPECTIVE ADJUSTMENTS

ERMA's Financial Stability Plan, Section II, defines the Retrospective Adjustment Process as follows:

As each program year is independent from the others, it is possible to assess each program's year's deficit, or surplus, independently on an annual basis as each program year reaches a certain maturity threshold.

The Retrospective Adjustment Process was approved unanimously at ERMA's February 22, 2008, Board of Directors meeting. This process calls for the retrospective adjustment (assessment for a deficit year or dividend release for a surplus year) for each program year that is a full five years old according to the following methodology:

- Each year at its May Board of Directors' meeting, the ERMA Board would formally retrospectively adjust a program year's retained earnings balance five full years after the inception of that program year and each year thereafter until the program year is closed (all claims have been settled, and no case or IBNR reserves remain).
- A deficit (in whole or part at the Board's discretion) would be assessed to increase the equity in each eligible program year to the expected confidence level.
- Alternatively, if an open program year is in a surplus position, the Board would consider issuing dividends (in whole or part at the Board's discretion) for any equity amount that exceeds the 90% confidence level to allow for continuing claims development in future years.
- If a current program year not yet eligible to receive a retrospective adjustment is in a deficit position at any confidence level, the negative equity at that confidence level will be subtracted from the "Total Distribution Available" at that confidence level.
- If no IBNR remains in a year in which all claims are closed, the Board would consider issuing dividends or levying an assessment to officially close out that year.

Additional considerations:

- It is possible for program years to re-open, in which case a later assessment is possible.
- In the event of an overall program surplus, an individual program year or multiple program years would not be adjusted via a dividend, unless the ERMA program as a whole remained funded at the 90% confidence level after the issuance of the dividend.
- The current year March 31 financial statements will be utilized to determine each program year's retained earnings balance, and net assessments/net dividends (due to the possibility of several program years being adjusted) will be invoiced/released on or before June 30.

## APPENDIX B

### EMPLOYMENT PRACTICES LIABILITY COVERAGE

#### A. GENERAL DESCRIPTION

##### 1. COVERAGE PROVIDED

The Memorandum of Coverage will provide defense and indemnity for *Wrongful Employment Practices*.

##### 2. LIMITS OF LIABILITY

The Limits of Liability of the coverage will be Combined Single Limits of at least \$1,000,000 less the amount of the individual *Member's Retained Limit* for each *Occurrence*. The Executive Committee or *Board of Directors* may authorize choices of limits other than \$1,000,000 to the Members, and excess insurance or reinsurance may be provided to provide protection in layers above \$1,000,000.

##### 3. RETAINED LIMITS

The *Retained Limits* available to the *Members* will be \$25,000, \$50,000, \$75,000, \$100,000, \$250,000, and \$500,000.

##### 4. RATES

The premium rates will be based on an actuarial report and adopted by the Executive Committee or *Board of Directors*.

##### 5. CONCLUSION

It is important that each *Member* understand the coverage provided under the Memorandum of Coverage, and any exclusions thereto, as each *Member* is individually responsible or must make other arrangements for any *Claim* not covered by the Memorandum.