



**EMPLOYMENT RISK MANAGEMENT AUTHORITY  
SPECIAL BOARD OF DIRECTORS MEETING  
AGENDA**

**Monday, September 12, 2022  
3:00 p.m.**

**[Zoom](#)**

**Dial-in Number: (669) 900-6833  
Meeting ID: 856 4059 7813  
Dial-in Passcode: 601329  
Web Passcode: ERMAJPA**

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All portions of this meeting will be conducted by teleconferencing in accordance with Government Code section 54953.

Members of the public may observe and listen to the meeting telephonically. No physical location will be available from which members of the public may observe the meeting and offer public comment. Public comments may be submitted in advance of the meeting by emailing Jennifer Jobe at [jennifer.jobe@sedgwick.com](mailto:jennifer.jobe@sedgwick.com). Alternatively, members of the public may offer spoken comments when public comment is requested, either at the beginning of the meeting as to non-agenda items, or regarding an agenda item at the time that item is considered.

In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation to participate in this meeting, please contact Jennifer Jobe at (916) 244-1141 or [jennifer.jobe@sedgwick.com](mailto:jennifer.jobe@sedgwick.com). Requests must be made as early as possible, and preferably at least one full business day before the start of the meeting.

Documents and materials relating to an open session agenda item that are provided to the Board will be available for public inspection. Please contact Jennifer Jobe at [jennifer.jobe@sedgwick.com](mailto:jennifer.jobe@sedgwick.com).

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

**4. MEMBERSHIP MATTERS**

- \*A. Consideration of Expulsion of the City of California City (CIRA)

*Recommendation: Staff recommends the Board of Directors consider the expulsion of the City of California City from ERMA and provide direction to staff, as necessary.*

**5. CLOSING COMMENTS**

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

- A. Board of Directors
- B. Staff

**6. ADJOURNMENT**

**NOTICES:**

The next meetings of the Board of Directors will be held:

- Monday, November 7, 2022, at 10:00 a.m. – Sacramento, CA
- Thursday, February 2, 2023, at 10:00 a.m. – Annual Workshop, Napa
- Friday, February 3, 2023, at 9:00 a.m. – Board Meeting, Napa
- Tuesday, April 25, 2023, at 10:00 a.m. – Board Meeting, TBD
- Monday, June 5, 2022, at 10:00 a.m. – Board Meeting, TBD

## **MEMBERSHIP MATTERS**

**Subject:      Consideration of Expulsion of the City of California City (CIRA)**  
***Prepared by Jennifer Jobe, Executive Director***

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**RECOMMENDATION:** *Staff recommends the Board of Directors consider the expulsion of the City of California City from ERMA and provide direction to staff, as necessary.*

### **BACKGROUND & STATUS:**

The City of California City (city) has participated in ERMA as an underlying member of CIRA since inception of the program in 1999. Annually, staff conducts an analysis of target ratio calculations based upon each member's loss history. At the November 2020 Board of Directors meeting, it was determined that because of the city's loss history during the 2017/18 program year, the city significantly exceeded the maximums allowed for the three parameters tracked by ERMA: claim severity, claim frequency, and loss ratio. As a result, the Board directed the Litigation Manager to conduct a risk assessment to aid in identification of the causes of the city's poor loss history and aid in the improvement of overall program performance.

The city's risk assessment included targeted guidance from ERMA staff and specialized training aimed at addressing the existing organizational impediments. The city continued to incur a higher-than-average number of claims, resulting in a loss ratio significantly outside of the parameters established by the Board of Directors.

In July 2021, the city appointed Interim City Manager, Anne Ambrose, to succeed the individual with whom staff previously worked with during the 2020 risk assessment. Throughout 2021, ERMA staff continued to meet with Ms. Ambrose and other city representatives regarding claims as well as the city's management of human resource and other employment-related matters. As a result of ERMA staff's ongoing concerns regarding city losses, it was determined additional corrective action should be taken to limit ERMA's exposure. In November 2021, the Board of Directors placed the city on a Performance Improvement Agreement (Plan) structured to assist the city in developing an effective personnel management process. Additionally, the Board issued a Notice of Intent to Terminate the city's participation in ERMA, effective June 30, 2022. This notice was issued in accordance with ERMA's Master Program Document, Article V. Participation, Section D.1., which states:

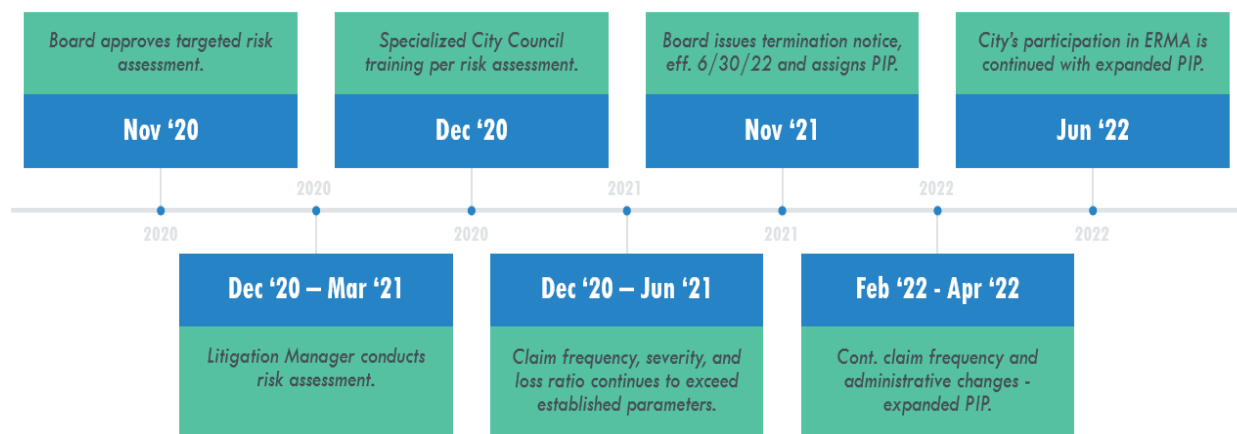
*"A Member in one Program Year shall participate in the next Program Year unless, at least six months before the commencement of the next Program Year:*

**ERMA**  
**Special Board of Directors Meeting**  
**September 12, 2022**

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(b) *a written termination notice from the Executive Committee or Board of Directors has been sent to the Member."*

In the ensuing months, the city continued to experience organizational impediments related to on-going administrative and other personnel changes which consistently resulted in on-going claim activity. In May 2022, Doug Dunford was appointed City Manager. Mr. Dunford met with staff to comply with the terms of the Plan. At the June 6, 2022, meeting, the Board of Directors took into consideration the city's stated efforts to meet and comply with the Plan in exchange for continued participation in ERMA. The Board imposed an Amendment to the existing Plan which expanded the terms to include an increase to the city's self-insured retention from \$250,000 to \$350,000, and a requirement to employ a professional and credentialed Human Resources Director. The city accepted the Amendment with assurance of work toward remediation of the identified areas of concern.



Staff was recently notified Mr. Dunford resigned as City Manager, effective September 16, 2022. Mr. Dunford's resignation, and the city's on-going organizational, administrative, and other personnel-related changes, present a state in which the city is unable to meet and comply with many of the terms of the Plan. As such, staff recommends the Board of Directors consider its options relative to the city's continued participation in ERMA. In accordance with ERMA's Joint Powers Agreement, Article XXII. Expulsion:

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

Further, Article XXIII. Effect of Withdrawal or Expulsion, states:

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

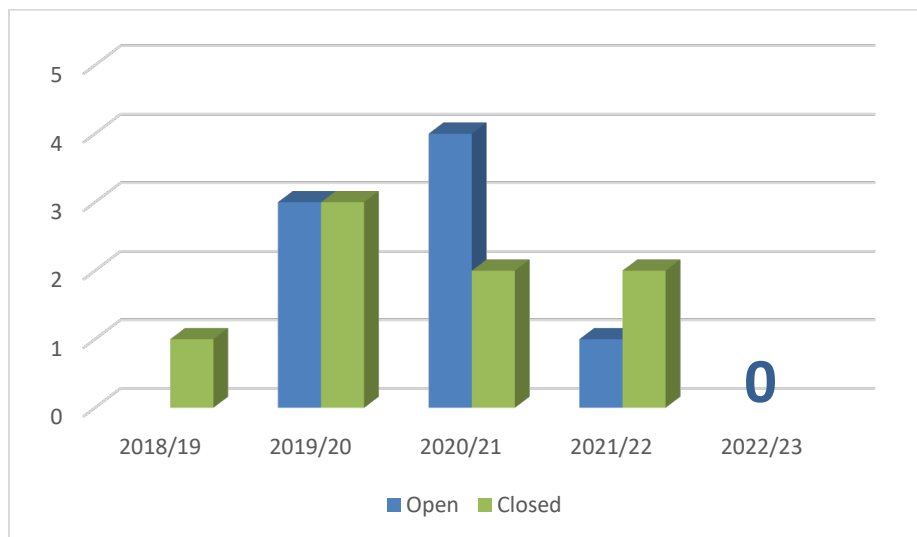
*A. Cooperate fully with ERMA in determining the cause of the losses and in the defense or settlement of claims, as defined in the Memorandum of Coverage;*

**ERMA**  
**Special Board of Directors Meeting**  
**September 12, 2022**

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

The city currently has eight open claims, three of which are litigated. The remaining five are in varying stages of evaluation, review, or investigation. The chart below provides a five-year historical overview of all open and closed claims by program year. To-date, the city has incurred no losses with an occurrence date on or after July 1, 2022.



Although ERMA’s governing documents do not specify a process for return of premium upon termination or expulsion of a member, the Financial Stability Plan (*revised May 1, 2018*), addresses the Board’s intent to protect the program from adverse loss development and the potential for assessments via a retrospective adjustment process for each program year that is a full five years old. Annually in April, the Board reviews the preliminary retrospective adjustment calculation in consideration of the upcoming program year budget. If, based upon the adjustment process, it is determined dividends are to be declared, such dividends are released to the primary member to be distributed as it is deemed appropriate.

Given the city’s continued organizational and staffing impediments, the Board should consider the options relative to an effective expulsion date and resulting return of premium.

- Option A: Expel California City, effective November 1, 2022, and return pro-rated contribution to CIRA.
- Option B: Expel California City, effective July 1, 2022, and return 2022/23 contribution to CIRA.

**ERMA**  
***Special Board of Directors Meeting***  
***September 12, 2022***

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Staff will review the proposed options and answer questions from the Board.

**ATTACHMENTS:**

1. 2020 Target Ratio Calculation Summary
2. Master Program Document, July 1, 2021
3. 2021 Target Ratio Calculation Summary
4. Joint Powers Agreement
5. Financial Stability Plan (*revised May 1, 2018*)
6. 2022/23 Final Operating Budget - CIRA
7. City of California City Performance Improvement Agreement, dated November 1, 2021
8. Amendment One to the City of California City Performance Improvement Agreement, dated June 6, 2022

**2020 ERMA Target Ratio Calculation  
Summary ~ All Claims**

	Prior Risk Assmt.	2014/2015			2015/2016			2016/2017			2017/2018			2018/2019			One parameter exceeded
		Target Ratios			Target Ratios			Target Ratios			Target Ratios			Target Ratios			Two parameters exceeded
		Frequency	Severity	Loss Ratio	Frequency	Severity	Loss Ratio	Frequency	Severity	Loss Ratio	Frequency	Severity	Loss Ratio	Frequency	Severity	Loss Ratio	Three parameters exceeded
<b>ERMA's Target</b>		<b>2.16%</b>	<b>170.31%</b>	<b>358.49%</b>	<b>2.40%</b>	<b>133.79%</b>	<b>315.85%</b>	<b>2.64%</b>	<b>75.04%</b>	<b>171.70%</b>	<b>2.40%</b>	<b>115.50%</b>	<b>277.19%</b>	<b>2.22%</b>	<b>50.12%</b>	<b>122.17%</b>	Assessment Recommended
<b>Insured:</b>																	<b>COMMENTS</b>
City of Adelanto	2017/18	6.18%	2409.12%	10261.00%				13.61%	723.09%	2385.45%	19.98%	0.00%	0.00%	10.70%	1123.15%	2789.59%	City is no longer an ERMA member
City of Atwater		2.15%	242.09%	416.61%				1.89%	141.47%	178.42%	3.68%	183.83%	200.10%	1.83%	109.57%	101.82%	Not recommended; Ratios exceeded due to historical administrative changes
City of Avalon					4.02%	286.93%	709.39%				1.84%	0.00%	0.00%				Not recommended; Ratios exceeded due to one claim
City of Banning	2014/15; 2015/16	0.75%	31.62%	30.92%	1.53%	313.44%	378.75%	0.75%	55.47%	67.95%	0.70%	0.00%	0.00%	1.93%	107.98%	107.64%	Not recommended; Ratios exceeded primarily due to one claim
City of Barstow		0.68%	331.41%	648.25%							0.68%	33.81%	76.62%				Not recommended; Ratios exceeded due to one claim
City of Belvedere														4.09%	79.23%	147.75%	Not recommended; Ratios exceeded due to one claim
City of Brentwood											1.05%	331.40%	1091.05%	0.32%	0.00%	0.00%	Not recommended; Ratios exceeded due to one claim
City of California City		1.74%	0.00%	0.00%				2.88%	0.00%	0.00%	1.40%	279.40%	433.56%	1.47%	0.00%	0.00%	Assessment recommended
City of Cathedral City								0.54%	46.99%	115.12%	0.50%	319.69%	724.49%				Not recommended; Ratios exceeded due to one claim
City of Clearlake											8.96%	285.00%	546.39%	2.75%	0.00%	0.00%	Not recommended; Ratios exceeded due to low loss claim
City of Coalinga		1.76%	0.00%	0.00%							1.88%	375.98%	360.41%	1.78%	0.00%	0.00%	Not recommended; Ratios exceeded due to one claim
Consolidated Mosquito Abatement District														6.75%	110.05%	202.86%	Not recommended; Ratios exceeded due to one claim
Contra Costa Mosquito and Vector Control District		4.44%	55.37%	89.06%				3.31%	0.00%	0.00%	3.16%	0.00%	0.00%	3.04%	106.30%	117.58%	Not recommended; Ratios exceeded due to low loss claims
Town of Danville					1.31%	0.00%	0.00%				1.26%	151.55%	498.94%				Not recommended; Ratios exceeded due to one claim
City of El Cerrito					0.59%	0.00%	0.00%				0.53%	0.00%	0.00%	1.50%	249.93%	843.92%	Not recommended; Ratios exceeded due to one claim
City of Fowler											5.22%	1118.16%	1174.56%	5.20%	0.00%	0.00%	Not recommended; Ratios exceeded due to one claim
City of Hughson		12.03%	1502.18%	1499.62%													Not recommended; No recent claims activity
City of Kingsburg								6.05%	840.66%	1394.16%							Not recommended; No recent claims activity
Los Angeles County West Vector Control District											3.40%	934.13%	1946.08%				Not recommended; Ratios exceeded due to one claim
City of McFarland	12/13; 14/15; 17/18				8.68%	1076.29%	1066.19%	4.41%	10.06%	10.48%	7.61%	0.00%	0.00%				Not recommended; No significant recent claims activity
City of Menifee		3.91%	0.00%	0.00%										5.64%	401.47%	449.24%	Not recommended; Ratios exceeded due to two claims
City of Mt. Shasta											5.14%	1183.29%	2980.82%				Not recommended; Ratios exceeded due to one claim
City of Nevada City					15.08%	0.00%	0.00%							3.98%	457.72%	853.62%	Not recommended; Ratios exceeded due to one claim

**2020 ERMA Target Ratio Calculation  
Summary ~ All Claims**

	Prior Risk Assmt.	2014/2015			2015/2016			2016/2017			2017/2018			2018/2019			One parameter exceeded
		Target Ratios			Target Ratios			Target Ratios			Target Ratios			Target Ratios			Two parameters exceeded
		Frequency	Severity	Loss Ratio	Frequency	Severity	Loss Ratio	Frequency	Severity	Loss Ratio	Frequency	Severity	Loss Ratio	Frequency	Severity	Loss Ratio	Three parameters exceeded
<b>ERMA's Target</b>		<b>2.16%</b>	<b>170.31%</b>	<b>358.49%</b>	<b>2.40%</b>	<b>133.79%</b>	<b>315.85%</b>	<b>2.64%</b>	<b>75.04%</b>	<b>171.70%</b>	<b>2.40%</b>	<b>115.50%</b>	<b>277.19%</b>	<b>2.22%</b>	<b>50.12%</b>	<b>122.17%</b>	Assessment Recommended
<b>Insured:</b>																	<b>COMMENTS</b>
City of Parlier		4.25%	180.86%	349.00%	5.09%	0.00%	0.00%	4.76%	0.00%	0.00%	10.18%	0.00%	0.00%	4.80%	0.00%	0.00%	City is no longer an ERMA member
City of Patterson								1.59%	0.00%	0.00%	1.42%	0.00%	0.00%	1.24%	186.22%	388.87%	Not recommended; Ratios exceeded due to one claim
City of Piedmont		0.94%	0.00%	0.00%	0.88%	191.03%	555.51%	0.86%	0.00%	0.00%	0.84%	85.00%	230.29%				Not recommended; Ratios exceeded due to one claim
City of Pleasant Hill					1.83%	868.72%	1330.05%										Not recommended; No recent claims activity
City of Pleasanton Fire Department (Livermore-Pleasanton)								0.52%	98.67%	308.23%							Not recommended; No recent claims activity
City of Porterville		0.57%	0.00%	0.00%							1.02%	316.68%	574.54%	0.50%	4.98%	9.26%	Not recommended; Ratios exceeded due to one claim
City of Rialto	2016/17	0.39%	0.00%	0.00%	1.16%	116.59%	287.79%	1.03%	272.16%	532.58%							City is no longer an ERMA member
San Gabriel Valley Mosquito and Vector Control District		5.88%	1092.42%	1130.47%	5.43%	1958.31%	1928.69%	5.35%	0.00%	0.00%							Not recommended; Claims activity and severity arose under prior management
City of Susanville								2.72%	340.20%	862.19%	2.52%	0.00%	0.00%				Not recommended; Ratios exceeded primarily due to one claim
City of Twentynine Palms											4.43%	0.00%	0.00%	4.26%	724.05%	1350.28%	Not recommended; Ratios exceeded due to one claim
City of Victorville											1.16%	0.00%	0.00%	0.72%	68.77%	137.10%	Not recommended; Ratios exceeded due to one claim
City of Wasco					3.56%	255.73%	450.45%										Not recommended; No recent claims activity
City of West Hollywood	2016/17; 2017/18	2.02%	1092.79%	2583.05%	0.46%	0.00%	0.00%										City is no longer an ERMA member
West Valley Mosquito and Vector Control District														7.17%	179.15%	330.25%	Not recommended; Ratios exceeded due to one claim

Note: The results of insureds who had claims but did not exceed more than one of the parameters are included in totals but not shown on this report.

Entities who have had previous risk assessments

Members with claims: 102  
Total number of claims: 365



**EMPLOYMENT RISK MANAGEMENT AUTHORITY**

**(ERMA)**

**MASTER PROGRAM DOCUMENT**

**FOR THE**

**POOLED EMPLOYMENT PRACTICES LIABILITY PROGRAM**

**(PEPLP)**

**AS AMENDED EFFECTIVE JULY 1, 2021**

## TABLE OF CONTENTS

<b>ARTICLE I - GENERAL</b>	1
A.    PURPOSE	1
B.    PROGRAM YEARS	1
C.    FINANCING THE PROGRAM	2
1.    DEPOSIT PREMIUMS	2
2.    CAPITAL CONTRIBUTION	3
3.    BONDS OR DEBT INSTRUMENTS	3
4.    ASSESSMENTS	3
D.    AMENDMENTS TO THIS PLAN	3
<b>ARTICLE II - COVERAGE</b>	3
A.    GENERAL DESCRIPTION	3
1.    COVERAGE PROVIDED	3
2.    LIMITS OF COVERAGE	4
3.    RETAINED LIMITS	4
4.    COVERAGE TERM, RENEWAL, AND CANCELLATION	5
B.    MEMORANDUM OF COVERAGE	5
C.    DISTRIBUTION	6
<b>ARTICLE III - PREMIUMS, RATES AND ASSESSMENTS</b>	6
A.    ADMINISTRATIVE EXPENSES, TRAINING EXPENSES AND DEPOSIT PREMIUM CALCULATIONS	6
1.    DEPOSIT PREMIUMS	6
2.    EXPERIENCE MODIFICATION	7
3.    PROGRAM ADMINISTRATIVE BUDGET	7
4.    PROGRAM TRAINING BUDGET	7
B.    UNDERWRITING CREDITS/DEBITS	8
C.    ADJUSTMENTS TO ACCOUNT BALANCES	8
1.    ESTABLISHMENT OF THE LEVEL OF FUNDING	8
2.    ASSESSMENTS	8
3.    RETROSPECTIVE ADJUSTMENTS	9
D.    CLOSED PROGRAM YEARS	9
<b>ARTICLE IV - ADMINISTRATION</b>	9
A.    ORGANIZATION AND RESPONSIBILITIES	9
1.    RELATION TO ERMA STRUCTURE	9
2.    BOARD OF DIRECTORS RESPONSIBILITIES	10
3.    EXECUTIVE COMMITTEE RESPONSIBILITIES	10
4.    ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES	10
5.    LITIGATION MANAGER	13
B.    REPORTS AND SCHEDULES	16
1.    FINANCIAL REPORTS	16
2.    CLAIMS REPORTS	16
3.    ACTUARIAL STUDIES	16
C.    LOSS CONTROL SERVICES/TRAINING/COMPLIANCE AUDITING	17

<b>ARTICLE V - PARTICIPATION.....</b>	<b>17</b>
A.    ELIGIBILITY AND APPLICATION.....	17
1.    ELIGIBILITY .....	17
2.    APPROVAL OF APPLICATION.....	18
3.    DATE OF MEMBERSHIP .....	18
4.    APPLICATION FEE CREDIT .....	18
B.    MEMBER'S DUTIES .....	19
1.    PROVIDE UNDERWRITING INFORMATION .....	19
2.    PAYMENT OF PREMIUMS AND OTHER CHARGES.....	19
C.    DUTY TO REPORT CLAIMS.....	20
D.    TERMINATION OF PARTICIPATION.....	20
<b>ARTICLE VI - CLAIMS ADMINISTRATION .....</b>	<b>21</b>
A.    SELECTION OF ADJUSTOR OR INVESTIGATION FIRM .....	21
B.    CLAIMS AUDIT .....	21
C.    AUTHORITY'S RIGHT AND DUTY TO DEFEND .....	22
D.    SETTLEMENT AUTHORITY .....	22
E.    DISPUTES REGARDING MANAGEMENT OF A CLAIM.....	22
F.    SELECTION OF DEFENSE COUNSEL.....	22
<b>ARTICLE VII - DEFINITIONS.....</b>	<b>24</b>
<b>APPENDIX A - RETROSPECTIVE ADJUSTMENTS.....</b>	<b>26</b>
<b>APPENDIX B - EMPLOYMENT PRACTICES LIABILITY COVERAGE .....</b>	<b>27</b>

# 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 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; ;
- (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 adjuster 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, \$350,000 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.

**Employment Risk Management Authority (ERMA)  
2021 Target Ratio Calculation  
Summary ~ All Claims**

	Prior Risk Asmt.	2015/2016 Target Ratios				2016/2017 Target Ratios				2017/2018 Target Ratios				2018/2019 Target Ratios				2019/2020 Target Ratios				TOTAL	One parameter exceeded
		Claims Count	Frequency	Severity	Loss Ratio	Claims Count	Frequency	Severity	Loss Ratio	Claims Count	Frequency	Severity	Loss Ratio	Claims Count	Frequency	Severity	Loss Ratio	Claims Count	Frequency	Severity	Loss Ratio	Claims Count	Two parameters exceeded
ERMA's Target			2.40%	135.57%	320.05%		2.66%	81.66%	186.54%		2.28%	108.32%	254.88%		2.23%	52.20%	128.32%		1.98%	41.37%	90.29%		Three parameters exceeded
Insured:																							Assessment Recommended
																							COMMENTS
City of Adelanto	2017/18					4	13.61%	717.45%	2366.82%	5	19.98%	0.00%	0.00%	3	10.70%	526.85%	1308.54%					12	City is no longer an ERMA member
City of Angels Camp																		1	3.60%	54.00%	92.32%	1	Not recommended. Ratios exceeded due to one claim
City of Atwater						1	1.89%	235.78%	297.37%	2	3.68%	336.80%	366.62%	1	1.83%	200.87%	186.67%	1	0.61%	0.00%	0.00%	5	Not recommended. Ratios exceeded due to historical administrative changes
City of Avalon		2	4.02%	371.92%	919.53%					1	1.84%	0.00%	0.00%									3	Not recommended. Ratios exceeded due to one claim
City of Banning	14/15; 15/16	2	1.53%	313.44%	378.75%	1	0.75%	55.47%	67.95%	1	0.70%	0.00%	0.00%	3	1.93%	181.83%	181.26%					7	Not recommended. Ratios exceeded primarily due to one claim
City of Belvedere														1	4.09%	79.23%	147.75%					1	Not recommended. Ratios exceeded due to one claim
City of Brentwood										3	1.05%	331.40%	1091.05%	1	0.32%	0.00%	0.00%					4	Not recommended. Ratios exceeded due to one claim
City of California City	2020/21					2	2.88%	0.00%	0.00%	1	1.40%	155.12%	240.70%	1	1.47%	0.00%	0.00%	5	7.58%	124.54%	179.00%	9	Not recommended. Assessment done last year
City of Cathedral City						1	0.54%	46.99%	115.12%	1	0.50%	316.74%	717.81%									2	Not recommended. Ratios exceeded primarily due to one claim
City of Ceres						3	2.00%	9.43%	11.89%	1	0.64%	0.00%	0.00%					1	0.68%	96.04%	98.51%	5	Not recommended. Ratios exceeded due to one claim
City of Clearlake										3	8.96%	509.04%	975.92%	1	2.75%	0.00%	0.00%					4	Not recommended. Ratios exceeded due to one claim
City of Coalinga										1	1.88%	291.85%	279.76%	2	1.78%	0.00%	0.00%	1	2.02%	118.78%	127.56%	4	Not recommended. Ratios exceeded due to one claim
Consolidated Mosquito Abatement District														1	13.50%	413.87%	762.91%					1	Not recommended. Ratios exceeded primarily due to one claim
Contra Costa Mosquito and Vector Control District						1	3.31%	0.00%	0.00%	1	3.16%	0.00%	0.00%	1	3.04%	168.98%	186.91%					3	Not recommended. Ratios due to low loss claims
City of Del Rey Oaks						2	19.05%	0.00%	0.00%					1	9.82%	981.59%	5854.80%	1	7.23%	0.00%	0.00%	4	Not recommended. Ratios exceeded due to one claim
City of Desert Hot Springs	2012/13																	1	1.81%	90.62%	191.48%	1	Not recommended. Ratios exceeded due to one claim
City of Eastvale																		1	7.22%	1133.12%	2394.29%	1	Not recommended. Ratios exceeded due to one claim
City of El Cerrito		1	0.59%	0.00%	0.00%					1	0.53%	0.00%	0.00%	3	1.50%	104.08%	351.45%	2	0.96%	0.00%	0.00%	7	Not recommended. Ratios exceeded due to one claim
City of Fowler										1	5.22%	1118.16%	1174.56%	1	5.20%	0.00%	0.00%					2	Not recommended. Ratios exceeded due to one claim
City of Kingsburg						2	6.05%	946.52%	1569.72%													2	Not recommended. No recent claims activity

**Employment Risk Management Authority (ERMA)  
2021 Target Ratio Calculation  
Summary ~ All Claims**

	Prior Risk Assmt.	2015/2016 Target Ratios				2016/2017 Target Ratios				2017/2018 Target Ratios				2018/2019 Target Ratios				2019/2020 Target Ratios				TOTAL	One parameter exceeded
		Claims Count	Frequency	Severity	Loss Ratio	Claims Count	Frequency	Severity	Loss Ratio	Claims Count	Frequency	Severity	Loss Ratio	Claims Count	Frequency	Severity	Loss Ratio	Claims Count	Frequency	Severity	Loss Ratio	Claims Count	Two parameters exceeded
ERMA's Target		2.40%	135.57%	320.05%		2.66%	81.66%	186.54%		2.28%	108.32%	254.88%		2.23%	52.20%	128.32%		1.98%	41.37%	90.29%		Claims Count	Three parameters exceeded
Insured:																							Assessment Recommended
Los Angeles County West Vector Control District										1	3.40%	157.36%	327.83%									1	Not recommended. No recent claims activity
City of Manteca		2	0.68%	1.56%	2.01%	3	0.93%	0.00%	0.00%					2	0.54%	0.00%	0.00%	1	0.26%	93.67%	144.83%	8	Not recommended. Ratios exceeded primarily due to one claim
City of McFarland	12/13; 14/15; 17/18	2	8.68%	1076.29%	1066.19%	1	4.41%	10.06%	10.48%	2	7.61%	0.00%	0.00%									5	Not recommended. No recent claims activity
City of Menifee														3	5.64%	391.03%	437.55%	3	4.92%	0.00%	0.00%	6	Not recommended. Ratios exceeded primarily due to one claim
MPA JPA Staff		1	6.69%	140.15%	0.00%																	1	Not recommended. No recent claims activity
City of Mt. Shasta										1	5.14%	2212.24%	5572.84%									1	Not recommended. Ratios exceeded due to one claim
City of Patterson						1	1.59%	0.00%	0.00%	1	1.42%	0.00%	0.00%	1	1.24%	125.75%	262.60%					3	Not recommended. Ratios exceeded due to one claim
City of Piedmont		1	0.88%	191.03%	555.51%	1	0.86%	0.00%	0.00%	1	0.84%	85.00%	230.29%									3	Not recommended. No recent claims activity
City of Pleasant Hill		2	1.83%	868.72%	1330.05%																	2	Not recommended. No recent claims activity
City of Pleasanton Fire Department (Livermore-Pleasanton)						1	0.52%	98.67%	308.23%													1	Not recommended. No recent claims activity
City of Porterville										2	1.02%	316.68%	574.54%	2	1.00%	14.44%	26.84%	1	0.48%	4.95%	8.45%	5	Not recommended. Ratios exceeded due to one claim
City of Rialto	2016/17	3	1.16%	116.59%	287.79%	3	1.03%	272.16%	532.58%													6	City is no longer an ERMA member
San Gabriel Valley Mosquito and Vector Control District		1	5.43%	1958.31%	1928.69%	1	5.35%	0.00%	0.00%													2	Not recommended. Claims activity and severity arose under prior management
SunLine Transit Agency		1	0.71%	75.76%	205.30%	2	1.31%	46.08%	126.73%									7	4.25%	105.05%	124.79%	10	Assessment Recommended
City of Susanville						1	2.72%	431.72%	1094.13%	1	2.52%	0.00%	0.00%									2	Not recommended. Ratios exceeded primarily due to one claim
City of Twentynine Palms										1	4.43%	0.00%	0.00%	1	4.26%	1490.70%	2779.98%					2	Not recommended. Ratios exceeded due to one claim
City of Wasco		1	3.56%	255.73%	450.45%																	1	Not recommended. No recent claims activity
City of Watsonville		2	0.83%	7.67%	39.95%					3	1.10%	5.30%	15.80%	2	0.70%	0.00%	0.00%	2	0.67%	83.80%	185.03%	9	Not recommended. Ratios exceeded due to low loss claims
West Valley Mosquito and Vector Control District														1	7.17%	358.30%	660.50%					1	Not recommended. Ratios exceeded due to one claim

Note: The results of insureds who had claims but did not exceed more than one of the parameters are included in totals but not shown on this report.

**Entities who have had previous risk assessments**

Members with claims: 112  
Total number of claims: 394



**JOINT POWERS AGREEMENT**

**CREATING THE**

**EMPLOYMENT RISK MANAGEMENT AUTHORITY**

**(ERMA)**

**EMPLOYMENT RISK MANAGEMENT AUTHORITY  
(ERMA)**

**JOINT POWERS AGREEMENT**

**TABLE OF CONTENTS**

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

**Table of Contents (Continued)**

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

# **EMPLOYMENT RISK MANAGEMENT AUTHORITY**

## **(ERMA)**

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

### **RECITALS**

1. The following state laws, among others, authorize the *Members* to enter into this *Agreement*:
  - A. Government Code Sections 989 and 990 permitting a local public entity to insure itself against liability and other losses;
  - B. Government Code Section 990.4 permitting local public entity to provide insurance and self-insurance in any desired combination;
  - C. Government Code Section 990.8 permitting two or more local entities to enter into an agreement to jointly fund such expenditures under the agency to Government Code Sections 6500-6515; and
  - D. Government Code Sections 6500-6515 permitting two or more local public entities to jointly exercise under an agreement any power which is common to each of them.
2. The governing board of each undersigned agency has determined that it is in its own best interest and in the public interest that this *Agreement* be executed and that it shall participate as a *Member* of the public entity created by this *Agreement*.

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

### **ARTICLE I**

## **CREATION OF EMPLOYMENT RISK MANAGEMENT AUTHORITY**

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

### **ARTICLE II** **PURPOSES**

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

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

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

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

### **ARTICLE III**

#### **DEFINITIONS**

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

- A. "Agreement" shall mean the joint powers agreement creating the Employment Risk Management Authority.
- B. "Alternate" shall mean the person designated by the *Member* to act as a director of *ERMA* in the absence of the *Representative*. The *Alternate* shall have the same responsibility, power and authority as the *Representative*.
- C. "Assessment" shall mean an amount determined by the *Board of Directors* or Executive Committee to be paid by each *Member* as necessary to meet *ERMA's* obligations.
- D. "ERMA" shall mean the Employment Risk Management Authority created by the *Agreement*.
- E. "Board" or "Board of Directors" shall mean the governing body of *ERMA* composed of a representative of each *Member*.
- F. "Coverage Programs" shall mean coverages provided directly by *ERMA* pursuant to a *Memorandum of Coverage* and/or provided by a purchased coverage.
- G. "Deposit Premium" shall mean the annual dollar amount determined by the *Board of Directors* or Executive Committee which is payable by each *Member* as its established share of the funding required to cover the financial obligations of each *Coverage Program* in which the *Member* participates.

- H. “Excess Insurance” shall mean that commercial insurance or reinsurance purchased by *ERMA* to cover losses in excess of *ERMA's Coverage Program* limits and/or each *Member's Retained Limit*.
- I. “Master Program Document” shall mean the document that sets forth the operations, policies and procedures of a given *Coverage Program*.
- J. “Member” shall mean any organization that is a party to the *Agreement*.
- K. “Memorandum of Coverage” shall mean a document issued by *ERMA* to *Members* specifying the type, amount and conditions of coverage provided to each participant by *ERMA*.
- L. “Program Year” shall mean a period of time determined by the *Board* or Executive Committee, usually 12 months, into which each *Coverage Program* shall be segregated for purposes of accounting and record-keeping.
- M. “Representative” shall mean the person designated by the *Member* to act as a director of *ERMA*. The *Representative* shall have the authority to bind the *Member* on any and all matters relating to the business of *ERMA*.
- N. “Retained Limit” shall mean the amount of a claim which the *Member* must pay or become liable for before *ERMA*, or any applicable purchased *Coverage Program*, is obligated to pay.

#### **ARTICLE IV**

#### **PARTIES TO AGREEMENT**

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

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

**ARTICLE V**  
**TERM OF AGREEMENT**

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

**ARTICLE VI**  
**POWERS OF *ERMA***

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

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



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

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

**ARTICLE VII**  
**MEMBERS' POWERS AND RESPONSIBILITIES**

**A. POWERS**

The *Members* shall have the following powers:

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

**B. RESPONSIBILITIES**

The *Members* shall have the following responsibilities:

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

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

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

## **ARTICLE VIII**

### **BOARD OF DIRECTORS**

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

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

## **ARTICLE IX**

### **EXECUTIVE COMMITTEE**

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

## **ARTICLE X**

### **ELECTION, APPOINTMENT AND DUTIES OF OFFICERS**

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

**ARTICLE XI**  
**MEETINGS AND RECORDS**

**A.     BOARD MEETINGS**

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

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

**B.     RECORDS**

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

**ARTICLE XII**  
**BYLAWS AND ADMINISTRATIVE POLICIES AND PROCEDURES**

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

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

### **ARTICLE XIII**

#### **FISCAL YEARS**

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

### **ARTICLE XIV**

#### **BUDGET**

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

### **ARTICLE XV**

#### **FINANCIAL AUDITS**

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

### **ARTICLE XVI**

#### **ESTABLISHMENT AND ADMINISTRATION OF FUNDS**

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

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

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

**ARTICLE XVII**  
**DEPOSIT PREMIUM**

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

**ARTICLE XVIII**  
**ASSESSMENTS AND DIVIDENDS**

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

**ARTICLE XIX**  
**COVERAGE PROGRAMS**

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

**ARTICLE XX**  
**NEW MEMBERS**

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

**ARTICLE XXI**  
**WITHDRAWAL**

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

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

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

## **ARTICLE XXII**

### **EXPULSION**

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

## **ARTICLE XXIII**

### **EFFECT OF WITHDRAWAL OR EXPULSION**

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

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



**ARTICLE XXIV**  
**TERMINATION AND DISTRIBUTION**

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

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

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

**ARTICLE XXV**  
**NOTICES**

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

**ARTICLE XXVI**  
**PROHIBITION AGAINST ASSIGNMENT**

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

**ARTICLE XXVII**  
**AMENDMENTS**

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

**ARTICLE XXVIII**  
**SEVERABILITY**

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

**ARTICLE XXIX**  
**HOLD HARMLESS AND INDEMNIFICATION**

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

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

**ARTICLE XXX**  
**AGREEMENT COMPLETE**

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

**ARTICLE XXXI**  
**EXECUTION OF COUNTERPARTS**

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

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

**Joint Powers Authority or Individual Entity:**

By: \_\_\_\_\_

**President or Duly Authorized Official**

By: \_\_\_\_\_

**Secretary or Clerk**

## **APPENDIX A**

### **MEMBER ENTITIES**

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

**ERMA**  
**FINANCIAL STABILITY PLAN**  
*Approved Revision as of May 1, 2018*

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**I. PURPOSE**

The purpose of this Financial Stability Plan is to ensure the long-term financial viability and stability of the Employment Risk Management Authority (ERMA). It is intended to be used as a tool by the Board of Directors to guide them in their funding and equity decisions. The Plan is intentionally conservative to reflect the difficulty in accurately forecasting employment practices liability costs, to protect the program from adverse loss development, and to reduce the possibility of assessments in future program years. Components of this Plan include the following:

1. Retrospective Adjustment Process  
To provide a formal process by which mature program years are adjusted;
2. Target Confidence Level Funding  
To provide a course of action to build an equity contingency margin;
3. Capital Fund  
To provide value to the Pool by providing a benefit to the members as a whole;
4. Target Equity Benchmarking Ratios  
To provide an annual calculation of ratios to assist the Board in making future funding and equity distribution decisions.
5. Budget Control Provision  
To provide information to the Board regarding significant variances in budget to actual expense categories requiring board approval.

**II. RETROSPECTIVE ADJUSTMENT PROCESS**

As each program year is independent from the others, it is possible to assess each program 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 (an "Eligible Program Year") according to the following methodology:

- Each year at its June Board of Directors' meeting, the ERMA Board would formally retrospectively adjust each eligible 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 at least the expected confidence level.
- Alternatively, if an eligible 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.

### III. TARGET CONFIDENCE LEVEL FUNDING

Each year an actuarial study is conducted by an accredited actuary. The study reflects a revaluation of the projected ultimate losses for the historical years and the expected losses for the upcoming year. The actuary also provides a margin for contingency which represents funding above the expected level. This margin is expressed in terms of various confidence levels. The ERMA Board of Directors does hereby establish the **70% confidence level** as the Minimum Target Confidence Level Funding (Target) for the Program.

The actuarial evaluation of the funding for historical years will be considered when setting rates for the next program year. If the funding for all historical years meets or exceeds the Target (The equity of the ERMA program as a whole is at the 70% confidence level), the Board of Directors will fund the next program year at a minimum of the target level (the 70% confidence level).

#### **IV. CAPITAL FUND**

ERMA's Capital Fund was created at the inception of the program to receive 15% of member contributions over a five-year period to "provide a margin for greater confidence in the program." All monies in the original Capital Fund were fully allocated as of June 30, 2010, and provided a benefit to all program years through 2009/2010.

The Capital Fund was re-activated in June, 2015, to receive \$300,000 from a dividend release for a future benefit.

The Capital Fund exists for the benefit of the pool with the purpose of providing a value to the members as a whole. It can also be used to further goals of becoming financially self-sufficient as equity increases.

The Capital Fund can collect premium from either a decrease in rates, an increase in confidence level, or a dividend release in order to retain the extra money as a reserve. Potential uses for the Capital Fund include:

- The implementation of a new program that will benefit all members,
- An offset against subsequent years' actuarial rate increases,
- Funding for excess coverage, and/or
- To provide the program with a greater contingency margin.

#### **V. TARGET EQUITY BENCHMARKING RATIOS**

Benchmarking is a mechanism that provides an annual calculation of target equity ratios to assist the Board in making future funding and equity distribution decisions. The ratios are a tool to be used in determining the overall health of the program and to provide a comparison of various benchmarks from year to year. The ERMA Board of Directors will only return "Equity" to the members after evaluating and concluding the following ratios remain appropriate for the group prior to and following any potential return of "Equity". The intent of the ratios is not to mandate a particular course of action should ratios fall within or without the target parameters.

##### **EQUITY RATIOS**

###### **"Net Contribution" to "Equity" ratio:**

**Target  $\leq 2:1$**

- Compares current equity for all program years to the net contributions collected in the current year.
- This ratio is a measure of how "Equity" is leveraged against possible pricing inadequacies.
- The higher the equity, the lower the ratio. Hence a low ratio is desirable.

**“Loss Reserves” to “Equity” ratio:**

**Target  $\leq 3:1$**

- Compares current equity for all program years to total claims liability.
- This ratio is a measure of how “Equity” is leveraged against possible reserve inaccuracies.
- The lower the liabilities, and/or the higher the equity, the lower the ratio. Hence a low ratio is desirable.

**“Equity” to “Self Insured Retention” ratio:**

**Target  $\geq 5:1$**

- Compares current equity for all program years to the group’s current self-insured retention.
- This ratio is a measure of the maximum amount that “Equity” could decline due to a single loss.
- The higher the equity, the greater number of “full hits” the group can absorb. Hence, a high ratio is desirable.

**Operating ratio:**

**Target  $\leq 100\%$**

- Compares revenues to expenses during a given year.
- This ratio is a measure of the inflows versus the outflows in each program year.
- The higher the revenues, and/or the lower the expenses, the lower the ratio. Hence, an operating ratio of less than 100% is desirable.

**Reserve Development:**

**Target  $\leq 20\%$**

- Compares changes in reserve liabilities from one year(s) to the next.
- This ratio is a measure of the change in aggregate ultimate losses from one valuation period to the prior valuation(s).
- The smaller the change in liability, the more stable the program. Hence, generally, both thresholds should be less than 20%.

**Change in Equity:**

**Target  $\geq -10\%$**

- Measures change in total equity from one year to the next.
- This ratio measures if a decline in equity in excess of 10% warrants action by the Board, such as an increase in annual contribution, or an assessment.

**VI. Budget Control Provision**

A “Report of Line Items Expected to Exceed Budgeted Amount” (Report) is included with the quarterly internal financial statements, as an addendum to the Income Statement. Each line item within each spending category - Claims Expense, Loss Prevention & Training, and General and Administrative Expenses - is included in the Report, if it has, or it is anticipated that it will, exceed the budget by the end of the year.



If one or more of the spending categories exceeds, or is expected to exceed, the budget for that category, it will be brought to the Board for approval at its next regularly scheduled meeting. Approval by the Board of the variance in any category will be recorded in the minutes of that meeting, but will not necessitate further action.

- VII.** The Board of Directors may re-evaluate this plan from time to time and make changes to it as deemed necessary by a majority vote of Board.

2022/2023 Final Operating Budget  
CIRA

										JPA Experience Mod Calculation (Used in determining the JPA's premium to ERMA)				Individual Experience Mod Calculation (Used in determining each individual member's premium to their JPA)									
Member	Actual 2021		Funding For Losses	Loss Prevention & Training	Admin. Costs	Deposit Premium	JPA Participation Credit	Net Deposit Premium	1	2	3	4	5	6	7	8	Info Only:		9	10	11	Prior Year Comparison	
	Payroll	SIR Selected								JPA Experience Modification Factor	Dep Prem Adjusted for Experience Modification	Off-Balance Factor	Dep Prem Adjusted for Off Balance Factor	Individual Experience Modification Factor	Capped Individual Experience Modification	Capped Ind. Ex Mod Including .25 capped change over prior year	Prior Year (2021/2022) Experience Modification	Deposit Adjusted for Experience Modification	Off-Balance Factor	Premium Adjusted for Off Balance Factor	Prior Year Deposit Premium	Increase (Decrease)	
1 Amador	\$39,660	\$250,000	\$119	\$3	\$21	\$144	(\$14)	\$129		1.250	\$162	1.025	\$166	0.000	0.750	0.750	0.750	\$97	1.221	\$119	\$110	\$9	
2 Arcata	8,945,064	250,000	26,925	735	4,764	32,424	(3,235)	29,189		1.250	36,486	1.025	37,408	2.360	1.500	1.250	1.000	36,486	1.221	44,559	35,406	9,153	
3 Avalon	4,763,892	250,000	14,339	392	2,537	17,268	(1,723)	15,545		1.250	19,431	1.025	19,923	0.000	0.750	0.750	0.750	11,659	1.221	14,239	15,132	(893)	
4 Belvedere (07/01/15)	2,359,252	250,000	7,101	194	1,256	8,552	(853)	7,698		1.250	9,623	1.025	9,866	0.998	0.998	0.998	1.028	7,685	1.221	9,386	8,547	838	
5 Blue Lake	488,904	250,000	1,472	40	260	1,772	(177)	1,595		1.250	1,994	1.025	2,045	0.000	0.750	0.750	0.750	1,197	1.221	1,461	1,492	(31)	
6 California City	7,768,859	350,000	16,837	639	4,137	21,613	(2,156)	19,456		1.250	24,320	1.025	24,935	7.144	1.500	1.500	1.500	29,184	1.221	35,642	44,100	(8,458)	
7 Calimesa	2,359,537	250,000	7,102	194	1,257	8,553	(853)	7,699		1.250	9,624	1.025	9,868	0.981	0.981	0.981	0.750	7,551	1.221	9,222	6,049	3,174	
8 Calistoga	7,032,098	250,000	21,167	578	3,745	25,490	(2,543)	22,946		1.250	28,683	1.025	29,408	0.000	0.750	0.750	0.750	17,210	1.221	21,018	18,450	2,568	
9 Citrus Heights	18,543,725	250,000	55,817	1,524	9,875	67,216	(6,706)	60,510		1.250	75,637	1.025	77,550	1.159	1.159	1.000	0.750	60,510	1.221	73,899	51,988	21,912	
10 Clearlake	4,795,097	250,000	14,433	394	2,554	17,381	(1,734)	15,647		1.250	19,559	1.025	20,053	4.817	1.500	1.500	1.250	23,470	1.221	28,664	21,654	7,010	
11 Cloverdale	4,544,285	250,000	13,678	374	2,420	16,472	(1,643)	14,828		1.250	18,536	1.025	19,004	0.000	0.750	0.750	1.000	11,121	1.221	13,582	16,704	(3,122)	
12 Coalinga	7,127,140	250,000	21,453	586	3,795	25,834	(2,578)	23,257		1.250	29,071	1.025	29,806	4.632	1.500	1.500	1.500	34,885	1.221	42,604	31,153	11,451	
13 Cotati	4,186,582	250,000	12,602	344	2,230	15,175	(1,514)	13,661		1.250	17,076	1.025	17,508	5.174	1.500	1.250	1.000	17,076	1.221	20,855	14,886	5,969	
14 Eureka	12,772,261	250,000	38,445	1,050	6,802	46,296	(4,619)	41,677		1.250	52,096	1.025	53,413	4.988	1.500	1.250	1.000	52,096	1.221	63,624	50,517	13,107	
15 Ferndale	768,202	250,000	2,312	63	409	2,785	(278)	2,507		1.250	3,133	1.025	3,213	0.000	0.750	0.750	0.750	1,880	1.221	2,296	2,113	183	
16 Fort Bragg	3,324,954	250,000	10,008	273	1,771	12,052	(1,202)	10,850		1.250	13,562	1.025	13,905	0.000	0.750	0.750	1.000	8,137	1.221	9,938	12,905	(2,967)	
17 Fortuna	4,997,383	250,000	15,042	411	2,661	18,114	(1,807)	16,307		1.250	20,384	1.025	20,899	0.000	0.750	0.750	1.000	12,230	1.221	14,936	19,332	(4,395)	
18 Grass Valley	8,906,430	250,000	26,808	732	4,743	32,284	(3,221)	29,062		1.250	36,328	1.025	37,247	0.000	0.750	0.750	0.750	21,797	1.221	26,620	24,038	2,582	
19 Healdsburg	17,360,623	250,000	52,255	1,427	9,245	62,928	(6,279)	56,649		1.250	70,812	1.025	72,602	0.918	0.918	0.918	1.000	51,995	1.221	63,500	61,565	1,935	
20 Highland	3,496,061	250,000	10,523	287	1,862	12,672	(1,264)	11,408		1.250	14,260	1.025	14,620	0.000	0.750	0.750	0.750	8,556	1.221	10,449	9,698	751	
21 Lakeport	3,208,087	250,000	9,656	264	1,708	11,629	(1,160)	10,468		1.250	13,085	1.025	13,416	4.043	1.500	1.250	1.000	13,085	1.221	15,981	12,738	3,243	
22 Menifee (10/1/08)	19,932,044	250,000	59,995	1,639	10,615	72,249	(7,209)	65,040		1.250	81,300	1.025	83,356	4.219	1.500	1.500	1.500	97,560	1.221	119,148	82,902	36,246	
23 Nevada City	2,167,929	250,000	6,525	178	1,155	7,858	(784)	7,074		1.250	8,843	1.025	9,066	0.000	0.750	0.750	0.750	5,306	1.221	6,480	7,586	(1,106)	
24 Placencia	18,565,202	250,000	55,881	1,526	9,887	67,294	(6,714)	60,580		1.250	75,725	1.025	77,639	1.651	1.500	1.250	1.000	75,725	1.221	92,481	61,096	31,385	
25 Placerville	6,413,314	250,000	19,304	527	3,415	23,247	(2,319)	20,927		1.250	26,159	1.025	26,820	0.000	0.750	0.750	0.750	15,695	1.221	19,168	19,080	88	
26 Plymouth	789,775	250,000	2,377	65	421	2,863	(286)	2,577		1.250	3,221	1.025	3,303	0.000	0.750	0.750	0.750	1,933	1.221	2,361	1,917	444	
27 Point Arena	445,709	250,000	1,342	37	237	1,616	(161)	1,454		1.250	1,818	1.025	1,864	0.000	0.750	0.750	0.750	1,091	1.221	1,332	1,197	135	
28 Rancho Cucamonga	27,046,389	250,000	81,410	2,224	14,403	98,036	(9,781)	88,255		1.250	110,319	1.025	113,108	0.529	0.750	1.201	1.451	105,994	1.221	129,448	155,104	(25,656)	
29 Rancho Cucamonga FPD (7/1/16)	20,958,185	250,000	63,084	1,723	11,161	75,968	(7,580)	68,388		1.250	85,486	1.025	87,647	0.000	0.750	0.750	0.750	51,291	1.221	62,641	56,478	6,163	
30 Rancho Santa Margarita (01/01/04)	2,789,483	250,000	8,396	229	1,486	10,111	(1,009)	9,102		1.250	11,378	1.025	11,666	0.000	0.750	0.750	0.750	6,827	1.221	8,337	7,826	511	
31 Rohnert Park	23,529,796	250,000	70,825	1,934	12,530	85,290	(8,510)	76,780		1.250	95,975	1.025	98,401	2.559	1.500	1.250	1.000	95,975	1.221	117,212	85,106	32,106	
32 San Juan Bautista	816,173	250,000	2,457	67	435	2,958	(295)	2,663		1.250	3,329	1.025	3,413	0.000	0.750	0.750	0.750	1,997	1.221	2,439	2,221	219	
33 Sebastopol	6,137,256	250,000	18,473	505	3,268	22,246	(2,220)	20,026		1.250	25,033	1.025	25,666	10.065	1.500	1.250	1.000	25,033	1.221	30,572	22,831	7,741	
34 Sierra Madre	7,275,662	250,000	21,900	598	3,875	26,372	(2,631)	23,741		1.250	29,676	1.025	30,427	0.000	0.750	0.750	1.000	17,806	1.221	21,746	26,329	(4,583)	
35 Sonoma	3,313,245	250,000	9,973	272	1,764	12,010	(1,198)	10,811		1.250	13,514	1.025	13,856	0.000	0.750	0.750	1.000	8,109	1.221	9,903	12,094	(2,191)	
36 South Lake Tahoe	20,092,774	250,000	60,479	1,652	10,700	72,831	(7,267)	65,565		1.250	81,956	1.025	84,028	0.069	0.750	0.750	0.750	49,173	1.221	60,054	58,129	1,925	
37 St Helena	7,463,865	250,000	22,466	614	3,975	27,055	(2,699)	24,355		1.250	30,444	1.025	31,214	0.000	0.750	0.750	1.000	18,266	1.221	22,308	28,759	(6,451)	
38 Tehama	59,554	250,000	179	5	32	216	(22)	194		1.250	243	1.025	249	0.000	0.750	0.750	0.750	146	1.221	178	137	41	
39 Trinidad	404,973	250,000	1,219	33	216	1,468	(146)	1,321		1.250	1,652	1.025	1,694	0.000	0.750	0.750	0.750	991	1.221	1,210	1,053	157	
40 Truckee	10,726,963	250,000	32,288	882	5,712	38,883	(3,879)	35,003		1.250	43,754	1.025	44,860	0.000	0.750	0.750	0.750	26,252	1.221	32,061	30,720	1,342	
41 Twenty-nine Palms	2,683,337	250,000	8,077	221	1,429	9,726	(970)	8,756		1.250	10,945	1.025	11,222	12.407	1.500	1.500	1.250	13,134	1.221	16,040	12,939	3,101	
42 Ukiah	20,239,458	250,000	60,921	1,664	10,778	73,363	(7,320)	66,043		1.250	82,554	1.025	84,641	0.723	0.750	0.750							

## **City of California City Performance Improvement Agreement**

THIS AGREEMENT (Agreement) is made effective as of November 5, 2021, between the Employment Risk Management Authority ("ERMA"), and the City of California City ("City"), sometimes collectively referred to as the "Parties".

On November 1, 2021, the Board of Directors of ERMA voted to enter in to a Performance Improvement Plan ("Plan") with the City, which if the conditions of the Plan are met within the term of the Agreement, the ERMA Board of Directors will reconsider its decision to terminate the City's participation as a member in ERMA. The ERMA Board made this decision because of significant concerns regarding the City's governance, risk management practices, claims history and employment practices.

Upon the express consideration arising by reason of the Board of Director's decision to reconsider its decision to terminate the City's participation in ERMA, which consideration is expressly acknowledged and relied upon by the City, and upon express consideration of the City's agreement to participate in and complete the Plan, which consideration is expressly acknowledged and relied upon by ERMA, the Parties agree as follows:


### **Performance Improvement Plan**

- ERMA staff have met with the City Manager to discuss the terms of the Plan prior to consideration by the ERMA Board of Directors.
- The City Council shall adopt the Plan by resolution no later than 30 days following adoption of the Plan by the ERMA Board of Directors. Once the City Council adopts the Plan, the Plan shall continue for ninety days from the date of adoption.
- All City management staff is required to complete "Management 101" training as identified by ERMA no later than 60 days after adoption of the Plan.
- The City shall retain an ERMA-recommended employment attorney from the ERMA defense panel to provide the City with ongoing advice and counsel on any/all personnel matters. Such personnel matters include, but are not limited to, termination, lay-off, job/position elimination, demotion, transfer, significant discipline, administrative leave, ADA/religion interactive process communication, and personnel investigation. Advice and counsel services shall be sought before the City takes any personnel action. If the City determines that it would like to disregard any specific advice and counsel recommendation by ERMA's recommended employment attorney, the City shall first confer with ERMA's Litigation Manager prior to taking the particular personnel action. If the City successfully completes the Plan and ERMA rescinds its termination of the City as a member, the City will continue to abide by the terms of this paragraph as long as the City retains its membership in ERMA.

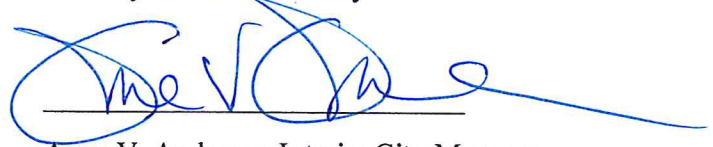
- The City Manager shall meet with ERMA staff telephonically every 30 days to review the status and progress of the Plan. Meeting dates to be established following adoption of the Plan by the City Council.

In the event the ERMA Board of Directors rescinds its termination of the City as a Member, ERMA reserves the right to continue implementation of the Plan until such time as ERMA determines that the City's employment practices are consistent with and in compliance with the City's obligations as a Member of ERMA.

For ERMA:

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

For City of California City:

  
\_\_\_\_\_  
Anne V. Ambrose, Interim City Manager

Date: November 18, 2021

Date: November 18, 2021



**Amendment One to the  
City of California City Performance Improvement Agreement**

THIS AGREEMENT (Agreement) is made effective as of June 6, 2022, between the Employment Risk Management Authority ("ERMA"), and the City of California City ("City"), sometimes collectively referred to as the "Parties".

On November 1, 2021, the Board of Directors of ERMA voted to enter in to a Performance Improvement Plan ("Plan"), which if the conditions of the Plan were met within the term of the Agreement, the ERMA Board of Directors would reconsider its decision to terminate the City's participation as a member in ERMA. The ERMA Board made this decision because of significant concerns regarding the City's governance, risk management practices, claims history and employment practices.

Upon the express consideration arising by reason of the Board of Director's decision to rescind its notice of intent to terminate the City's participation in ERMA, which consideration is expressly acknowledged and relied upon by the City, and upon express consideration of the City's agreement to participate in and complete the Plan, including Amendment One, which consideration is expressly acknowledged and relied upon by ERMA, the Parties further agree as follows:

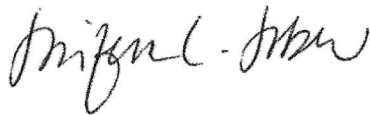
**Expanded Performance Improvement Plan**

- ERMA staff will meet with the City Manager to discuss the terms of the Expanded Plan prior to consideration by the ERMA Board of Directors.
- All City management staff who previously have not completed "Management 101" training as identified by ERMA under the Plan, effective November 5, 2022, shall complete training no later than 60 days after adoption of the Expanded Plan.
- The City shall continue to retain an ERMA-recommended employment attorney from the ERMA defense panel to provide the City with ongoing advice and counsel on any/all personnel matters. Such personnel matters include, but are not limited to, termination, lay-off, job/position elimination, demotion, transfer, significant discipline, administrative leave, ADA/religion interactive process communication, and personnel investigation. Advice and counsel services shall be sought before the City takes any personnel action. If the City determines that it would like to disregard any specific advice and counsel recommendation by ERMA's recommended employment attorney, the City shall first confer with ERMA's Litigation Manager prior to taking the particular personnel action. If the City successfully completes the Plan and ERMA rescinds its termination of the City as a member, the City will continue to abide by the terms of this paragraph as long as the City retains its membership in ERMA.
- The City shall hire and retain an experienced, professional Human Resources Director with public sector expertise.

- The City's retained limit for all ERMA claims shall be increased from \$250,000 to \$350,000 per claim.
- The City shall remain in compliance with the Performance Improvement Plan in place with the California Intergovernmental Risk Authority, effective May 20, 2022.
- The City Council shall adopt the Expanded Plan by resolution no later than 30 days following adoption of the Expanded Plan by the ERMA Board of Directors. Once the City Council adopts the Expanded Plan, the Expanded Plan shall continue until such time as the ERMA Board of Directors determines the City has met its obligations set forth in the Expanded Plan.
- The City Manager shall meet with ERMA staff telephonically every 30 days to review the status and progress of the Expanded Plan. Meeting dates to be established following adoption of the Expanded Plan by the City Council.

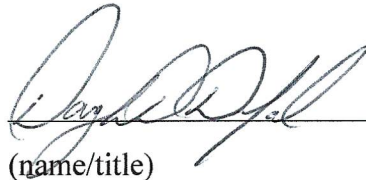
For ERMA:

For City of California City




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Jennifer Jobe, Executive Director



(name/title)

Date: June 17, 2022

Date: JUNE 30, 2022