

**VECTOR CONTROL JOINT POWERS AGENCY
(VCJPA)**

POOLED LIABILITY PROGRAM

MEMORANDUM OF COVERAGE

FOR THE 2023/24 PROGRAM YEAR

VECTOR CONTROL JOINT POWERS AGENCY

MEMORANDUM OF COVERAGE

POOLED LIABILITY PROGRAM

DECLARATIONS

POLICY NO. VCJPA 2023-1GL

NAMED COVERED PARTY:	Vector Control Joint Powers Agency, et. al., as per Endorsement No. 1 1750 Creekside Oaks Drive, Suite 200 Sacramento, CA 95833
POLICY PERIOD:	From 7-1-2023 to 7-1-2024 12:01 a.m. Pacific Time
LIMIT OF COVERAGE:	\$1,000,000 per occurrence
FORMS AND ENDORSEMENTS: <small>Forming Part of the Policy at Inception</small>	VCPLP and Endorsement No. 1

ON BEHALF OF VECTOR CONTROL JOINT POWERS AGENCY


Authorized Representative

POOLED LIABILITY PROGRAM
MEMORANDUM OF COVERAGE
FOR THE
VECTOR CONTROL JOINT POWERS AGENCY
(VCJPA)

TABLE OF CONTENTS

<u>SECTION I - COVERAGE</u>	1
<u>SECTION II - DEFINITIONS</u>	1
<u>SECTION III - DEFENSE AND SETTLEMENT</u>	8
<u>SECTION IV - VCJPA'S LIMIT OF COVERAGE</u>	8
<u>SECTION V - <i>COVERAGE PERIOD</i> AND TERRITORY</u>	9
<u>SECTION VI - EXCLUSIONS</u>	9
<u>SECTION VII - CONDITIONS</u>	15

POOLED LIABILITY PROGRAM
MEMORANDUM OF COVERAGE
FOR THE
VECTOR CONTROL JOINT POWERS AGENCY
(VCJPA)

In consideration of the payment of the deposit premium, the *Agency* agrees with the *Covered Parties* as follows:

SECTION I - COVERAGE

The *Agency* will pay up to the *Limit of Coverage* those sums on behalf of the *Covered Parties* for the *Ultimate Net Loss*, less the *Retained Limit* that the *Covered Parties* pay as *Damages* because of *Bodily Injury*, *Non-Employment Sexual Abuse*, *Property Damage*, *Personal Injury*, *Public Officials Errors and Omissions*, or *Wrongful Employment Practice* as those terms are herein defined and to which this Memorandum applies, caused by an *Occurrence* during the *Coverage Period*, except as otherwise excluded.

This Memorandum of Coverage does not provide insurance, but instead provides for pooled risk sharing. This Memorandum is a negotiated agreement among the *Members* of the *Agency*, and none of the parties to the Memorandum is entitled to rely on any contract interpretation principles that require interpretation of ambiguous language against the drafter of such agreement. This Memorandum shall be applied according to the principles of contract law, giving full effect to the intent of the *Members* of the *Agency*, acting through the Board of Directors in adopting this Memorandum of Coverage. As the *Agency* is not an insurer, it has no obligation to provide “Cumis” counsel to a *Covered Party* in disputed coverage situations under Civil Code section 2860.

SECTION II - DEFINITIONS

1. "Aircraft" means a vehicle designed for the transport of persons or property principally in the air.
2. "Agency" means the Vector Control Joint Powers Agency.
3. "Automobile" means a land motor vehicle, trailer, or semi-trailer.
4. "Bodily Injury" means bodily injury, sickness, disease, or emotional distress sustained by a person, including death resulting from any of these at any time. *Bodily Injury* includes *Damages* claimed by any person or organization for care, loss of services, or death resulting at any time from the *Bodily Injury*.
5. "Coverage Period" means that term prescribed for coverage by the *Agency* as set forth in the *Declarations* page.

6. “Covered Indemnity Contract” means that part of any contract or agreement pertaining to the *Covered Party’s* routine governmental operations under which the *Covered Party* assumes the tort liability of another party to pay for *Bodily Injury* or *Property Damage* to a third person or organization. This definition applies only to tort liability arising out of an *Occurrence* to which this Memorandum applies. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
7. “Covered Party” means:
- (a) The directors and officers of the *Agency* while acting on behalf of the *Agency* with respect to Public Officials Errors & Omissions.
 - (b) A *Member* of the *Agency*. This includes all entities named in its Declarations page, including any and all commissions, agencies, districts, authorities, boards (including the governing board), or similar entities coming under the *Member’s* direction or control, or for which the *Member’s* board members sit as the governing body.
 - (c) A member of a joint powers authority (JPA) which is a *Member* of the *Agency* herein, which participates in said JPA’s liability program. This includes all entities named in its Declarations page, including any and all commissions, agencies, districts, authorities, boards (including the governing board), or similar entities coming under the *Member’s* direction or control, or for which the *Member’s* board member sits as the governing body.
 - (d) Any person or *Member* identified as a *Covered Party* in a certificate of coverage to third parties duly issued by the *Agency* for *Occurrences* during the *Coverage Period* identified in the certificate of coverage. The person or *Member* is a *Covered Party* only for *Occurrences* arising out of the described activity.
 - (e) Any person who is an official, employee, trustee, or volunteer of a person or *Member* covered by (b), (c), or (d) herein, whether or not compensated, while acting in an official capacity for or on behalf of such person or *Member*, including while acting on any outside board at the direction of such person or *Member*.
 - (f) With respect to any *Automobile* owned or leased by a *Member*, or loaned to or hired for use by or on behalf of the *Member*, any person while using such *Automobile* and any person or organization legally responsible for the use thereof, provided the actual use is with the express permission of the *Member*, but this protection does not apply to:
 - i. Any person or organization, or any agent or employee thereof, operating an *Automobile* sales agency, repair shop, service station, storage garage, or public parking place, with respect to an *Occurrence* arising out of the operation thereof. This exception does not apply if the *Automobile* is a *Trailer* connected to an *Automobile* you own; or
 - ii. The owner or any lessee, other than the *Member*, of any *Automobile* hired by or loaned to the *Member* or to any agent or employee of such owner or lessee.

- (g) No person or *Member* is a *Covered Party* with respect to the conduct of any current or past partnership, joint venture, or joint powers authority that is not shown as a named *Covered Party* in the Declarations; however, for any person (1) who is an official, employee, trustee, or volunteer of a *Member* covered by (b) or (c) herein, (2) who participates in the activities of the partnership, joint venture, or joint powers authority (or any separate agency or *Member* created under any joint powers agreement by the named *Member*), and (3) who is acting for or on behalf of a *Member* covered by (b) or (c) herein at the time of the *Occurrence*, then coverage is afforded by this Memorandum. Such coverage will be in excess of and shall not contribute with any collectible insurance or other coverage provided to the other joint powers authority, agency, or *Member*.
- (h) Notwithstanding subsections (e) and (f) above, the defense and indemnity coverage afforded by this Memorandum to a past or present official, employee, trustee, or volunteer of a *Member* (including a member entity of a *Member* joint powers authority) is not broader than the *Member's* duty to defend and indemnify its official, employee, trustee, or volunteer pursuant to California Government Code Section 815, 815.3, 825 to 825.6, 995 to 996.6, inclusive, and any amendments thereof. If the *Member* which employs the official, employee, trustee, or volunteer is not obligated under the California Government Code to provide a defense, or to provide indemnity for a claim, or if said *Member* refuses to provide such defense and/or indemnity to said official, employee, trustee, or volunteer, then this Memorandum shall not provide any such defense or indemnity coverage to said official, employee, trustee, or volunteer. All immunities, defenses, rights, and privileges afforded to a *Member* under California Government Code Section 815, 815.3, 825 to 825.6, 995 to 996.6, inclusive, and any amendments thereof, shall be afforded to the *Agency* to bar any defense or indemnity coverage under this Memorandum to that *Member's* official, employee, trustee, or volunteer. However, a *Member's* official, employee, trustee or volunteer shall remain a *Covered Party* when using an *Automobile* owned or leased by the *Member* at any time (including *Automobile* use that may be outside the scope of employment), so long as the actual use is with the express permission of the *Member*.
8. "Damages" means compensation in money recovered by a third party for loss or detriment it has suffered through the acts of a *Covered Party*. *Damages* include (1) attorney fees not based on contract awarded against the *Covered Party*, (2) interest on judgments, or (3) costs for which the *Covered Party* is liable either by adjudication or by compromise with the written consent of the *Agency*, if the fees, interest, or costs arise from an *Occurrence* to which this coverage applies.
9. "Defense Costs" means all fees and expenses incurred by any *Covered Party*, caused by and relating to the adjustment, investigation, defense, or litigation of a claim to which this coverage applies, including attorney's fees, court costs, and interest on judgments accruing after entry of judgment. *Defense Costs* shall include adjusting expenses of a third party claims administrator that are specifically identifiable with a claim subject to this coverage. *Defense Costs* shall also include reasonable attorney fees and necessary litigation expenses incurred by or for a party other than the *Covered Party*, which are assumed by the *Covered Party* in a *Covered Indemnity Contract* where such attorney fees or costs are attributable to a

claim for *Damages* covered by this Memorandum. *Defense Costs* shall not include the office expenses, salaries of employees and officials, or expenses of the *Covered Party* or the *Agency*. *Defense Costs* shall not include any fee or expense relating to coverage issues or disputes between the *Agency* and any *Covered Party* unless the entity named in the Declarations prevails in such dispute, or attorney fees or costs awarded to a prevailing plaintiff against the *Covered Party*.

10. "Lawsuit" means (a) a civil proceeding in which *Damages* are alleged because of an *Occurrence* and which, in the opinion of the *Agency*, is or may be covered by this Memorandum, and (b) a civil proceeding filed in court under the Clean Water Act, Porter-Cologne Water Quality Control Act or California Environmental Quality Act as described in section VI(1)(d), subsections (iii) and (iv). *Lawsuit* includes arbitration or other alternative dispute resolution proceeding in which such *Damages* are claimed and to which the *Covered Party* must consent or to which the *Covered Party* and the *Agency* mutually consent.
11. "Limit of Coverage" shall be the amount of coverage stated in the Declaration page or certificate of coverage, or sublimits as stated therein for each *Covered Party* per *Occurrence*, subject to any lower sublimit stated in this Memorandum. For each *Occurrence*, there shall be only one *Limit of Coverage* regardless of the number of claimants or *Covered Parties* against whom a claim is made. In the event that a structured settlement, whether purchased from or through a third-party, or paid directly by the *Covered Party* in installments, is utilized in the resolution of a claim or suit, the *Agency* will pay only up to the amount stated in the Declarations or certificate of coverage in present value of the claim, as determined on the date of settlement, regardless of whether the full value of the settlement exceeds the amount stated in the Declarations or certificate of coverage.

As respects *Wrongful Employment Practices* coverage only, the *Agency* will pay up to \$25,000 per *Occurrence* for the *Ultimate Net Loss* less the *Member's Retained Limit* (as defined in this section II) that the *Covered Parties* become legally obligated to pay as *Damages* because of *Wrongful Employment Practices* caused by an *Occurrence* during the *Coverage Period*, except as otherwise excluded. For purposes of this paragraph, the phrases "*Wrongful Employment Practices*," "*Occurrence*," "*Damages*," and "*Ultimate Net Loss*" shall have the meanings as defined in the Employment Risk Management Authority (ERMA) Memorandum of Coverage that is incorporated herein as though fully set forth. For those *Members* that participate in the ERMA coverage, for any *Occurrence* with an *Ultimate Net Loss* in excess of \$25,000, the *Member* shall receive *Wrongful Employment Practices* coverage from ERMA pursuant to and subject to the terms and conditions of the ERMA Memorandum of Coverage. All terms, definitions, exclusions and conditions of the ERMA Memorandum of Coverage are incorporated herein as though fully set forth and shall apply to the *Wrongful Employment Practices* coverage only.

ERMA coverage of *Wrongful Employment Practices* coverage is optional. If a *Member* chooses not to participate in the ERMA program, then that *Member* and the *Covered Parties* under that *Member* shall be excluded from the ERMA Memorandum of Coverage and shall not receive ERMA coverage or benefits. However, the non-participating *Members* and their

Covered Parties may receive limited *Wrongful Employment Practices* coverage from the Agency as described in the preceding paragraph (limited to \$25,000 per *Occurrence* less the *Member's Retained Limit*).

12. "Medical Malpractice" means the rendering of or failure to render any of the following services:
- (a) Medical, surgical, dental, psychiatric, psychological counseling, x-ray, or nursing service or treatment or the furnishing of food or beverages in connection therewith; or any services provided by a health care provider as defined in Section 6146 (c), (2), (3), of the California Business and Professions Code.
 - (b) Furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

Medical Malpractice does not include emergency medical services or first aid administered by employees, nor does it include advice or services rendered by a 911 emergency dispatcher.

13. "Member" shall mean any organization that is a party to the Agreement creating the Vector Control Joint Powers Agency.
14. "Non-Employment Sexual Abuse" means actual or alleged unwelcome or offensive act, conduct, or statement of a sexual nature directed towards any claimant(s), including any sexual act, contact or touching of a sexual nature, sexual assault, abuse, molestation or harassment of a sexual nature, or verbal, written, recorded, or electronic correspondence, transmission or communication of a sexual nature.
15. "Nuclear Material" means *Source Material*, *Special Nuclear Material*, or *Byproduct Material*. "*Source Material*," "*Special Nuclear Material*," and "*Byproduct Material*" have the meanings given to them by the Atomic Energy Act of 1954 or in any law amendatory thereof.
16. "Occurrence" means:
- (a) With respect to *Bodily Injury* or *Property Damage*: an accident, including continuous or repeated exposure to substantially the same generally harmful conditions, which results in *Bodily Injury* or *Property Damage* neither expected nor intended from the standpoint of the *Covered Party*. Loss of use of tangible property that is not physically injured shall be deemed to occur at the time of the *Occurrence* that caused it.
 - (b) With respect to *Non-Employment Sexual Abuse*: An act, course of conduct, or statement by a *Covered Party* during the *Coverage Period* that results in a written claim or *Lawsuit* for *Non-Employment Sexual Abuse* if the first act, course of conduct, or statement occurred during the *Coverage Period*. All allegations by the same clamant in the same claim or *Lawsuit* shall be considered one *Occurrence* for the purpose of the *Limit of Coverage*, and, in the event of an allegation of multiple

acts, conduct, or statements, such *Occurrence* shall be deemed to exist on the date of the alleged first act, conduct, or statement. Regardless of the number of *Covered Parties* or claimants, all claims by all claimants arising from the same act, course of conduct, or statement shall be considered as one *Occurrence* for the purpose of the *Limit of Coverage*.

- (c) With respect to *Personal Injury*: an offense described in the definitions of those terms in this coverage Memorandum.
- (d) With respect to *Public Officials Errors and Omissions*: any actual or alleged misstatement or misleading statement or act or omission as described in the definitions of the term in this coverage Memorandum
- (e) With respect to *Wrongful Employment Practices*: the definition of *Occurrence* is defined in the Employment Risk Management Authority's Memorandum of Coverage that is incorporated herein as though fully set forth and to which this Memorandum applies.

17. "Personal Injury" means injury arising out of one or more of the following offenses:

- (a) False arrest, detention or imprisonment, or malicious prosecution;
- (b) Abuse of legal process;
- (c) Wrongful entry into, or eviction of a person from, a room, dwelling, or premises that a person occupies;
- (d) Publication or utterance of material, including continuous or repeated, that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, or oral or written publication of material that violates a person's right of privacy;
- (e) Discrimination or violation of civil rights; and
- (f) Injury resulting from the use of reasonable force.

18. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals, airborne particles, or fibers and waste. Waste includes materials to be recycled, reconditioned, or reclaimed. The term *Pollutants* as used herein does not mean potable water, agricultural water, water furnished to commercial users, or water used for fire suppression.

19. "Property Damage" means:

- (a) Physical injury or destruction of tangible property, including all resulting loss of use of that property; or
- (b) Loss of use of tangible property that is not physically injured or destroyed.

20. *"Public Officials Errors and Omissions"* means any (including continuous or repeated) actual or alleged misstatement or misleading statement or act or omission by any *Covered Party* (individually or collectively) arising in the course and scope of their duties with the *Covered Party* or claimed against them solely by reason of their being or having been public officials or employees, and which results in damage neither expected nor intended from the standpoint of the *Covered Party*. All claims involving the same misstatement or misleading statement or act or omission or a series of contiguous or interrelated misstatements or misleading statements or acts or omissions will be considered as arising out of one *Occurrence*.
21. *"Retained Limit"* means the amount of the self-insured retention for the *Member* as set forth in the applicable Declarations page or endorsement, which is the amount of the *Ultimate Net Loss* for which the *Member* or its *Covered Parties* are liable for before the *Agency* is obligated to make payment, subject to the following:
- (a) For each *Occurrence*, there shall be only one *Retained Limit* regardless of the number of claimants or *Covered Parties* against whom a claim is made.
 - (b) Payment of the *Retained Limit* shall be apportioned among the *Covered Parties* in accordance with their proportionate shares of liability. If the payment is for a settlement, the *Retained Limit* shall be apportioned among the *Covered Parties* in accordance with the respective parties' agreed upon or court-determined share of liability. In the event that the apportionment requires court determination, the *Covered Parties* will pay all costs of the *Agency* in seeking such determination, including its attorney's fees in proportion to the court's determination of liability.
 - (c) For *Wrongful Employment Practices* coverage only, if the Employment Risk Management Authority (ERMA) determines that a *Covered Party* is not in substantial compliance with the requirements of Government Code section 12950.2 (concerning mandatory sexual harassment training) during the *Coverage Period* for an *Occurrence* related to that code section in violation of the condition of coverage at Section VII(1)(F) of the ERMA Memorandum of Coverage, and if ERMA therefore doubles the *Agency's* ERMA *Retained Limit* for the *Occurrence* pursuant to the ERMA Memorandum of Coverage, then the *Agency* shall pay the regular ERMA *Retained Limit* for the *Occurrence* (less the *Member's* *Agency Retained Limit*) and the *Covered Party* shall pay the penalty (i.e., the second ERMA *Retained Limit*). Upon request by a *Covered Party* facing this penalty, the penalty initially shall be paid in full by the *Agency* and then charged back to the *Covered Party* and paid over time by the *Covered Party* pursuant to the *Agency's* usual retrospective adjustment process.
 - (d) For *Wrongful Employment Practices* coverage only, and for *Members* that participate in the ERMA coverage, the *Member's* *Agency Retained Limit* shall be the lesser of the *Member's* *Retained Limit* as shown in the applicable Declarations page or endorsement or \$25,000.

22. *"Ultimate Net Loss"* means the sums actually paid by the *Covered Parties* comprising the total of all *Defense Costs* incurred by the *Covered Parties* and all *Damages* for which the *Covered Parties* are liable either by adjudication or by compromise with the written consent of the *Agency*, arising from an *Occurrence* to which this coverage applies.
23. *"Unmanned Aircraft System"* means a device or machine that is intended to navigate in the air without an on-board pilot, also commonly referred to as a "drone."
24. *"Wrongful Employment Practice"* this term is as defined in the Employment Risk Management Authority's Memorandum of Coverage that is incorporated herein as though fully set forth and to which this Memorandum applies.

SECTION III - DEFENSE AND SETTLEMENT

The *Agency* shall assume charge of the investigation and defense of all claims seeking *Damages* and *Lawsuits*. The *Agency* shall have the right to control the negotiation, investigation, defense, appeal or settlement of any claim or *Lawsuit* that, in the opinion of the *Agency*, is or may be covered by this Memorandum. The *Covered Party* shall fully cooperate in all matters pertaining to such claim or *Lawsuit*. However, the *Covered Party* may exercise settlement control of those claims and *Lawsuits* only within its *Retained Limits* unless the *Agency's* Litigation Manager notifies the *Covered Party* that the *Agency* is assuming control of the disposition or settlement of such claims and *Lawsuits*.

No claim or *Lawsuit* shall be settled for an amount in excess of the *Agency's Retained Limits* without the prior written consent of the California Affiliated Risk Management Authorities.

If the *Agency* denies liability for a claim or *Lawsuit*, the *Covered Party* may elect to litigate or settle the claim or *Lawsuit* on its own behalf. In either event, however, the *Covered Party* shall be liable for the full amount of any judgment or settlement, including all related costs and fees in connection therewith, unless and until it has been determined by arbitration that the *Agency* has liability for the claim or *Lawsuit* under the Memorandum of Coverage.

SECTION IV - VCJPA'S LIMIT OF COVERAGE

Regardless of the number of (1) persons or entities covered under this Memorandum (2) persons or organizations making claims or bringing suits, or (3) claims made or suits brought, the *Limit of Coverage* stated on the Declarations page, less the *Retained Limit*, or any sublimit contained in this Memorandum is the most the *Agency* will pay for an *Ultimate Net Loss* arising out of any one *Occurrence*. In the event that a structured settlement, whether purchased from or through a third party or paid directly by the *Covered Party* in installments, is utilized in the resolution of a claim or suit, only the present value of the agreed-upon payments (the present value "cost" of the structured settlement) shall be considered in satisfaction of the *Covered Party's Retained Limit*. The *Limit of Coverage* for an additional covered party (including its officials, employees and volunteers) shall be the limit stated in its additional covered party certificate, regardless of the limit that applies to the member entity.

In the event that a structured settlement, whether purchased from or through a third-party, or paid directly by the *Covered Party* in installments, is utilized in the resolution of a claim or suit, the *Agency* will pay only up to the amount stated in the Declarations or certificate of coverage, in present value of the claim as determined on the date of settlement, regardless of whether the full value of the settlement exceeds the amount stated in the Declarations or certificate of coverage.

SECTION V - COVERAGE PERIOD AND TERRITORY

This Memorandum applies to *Bodily Injury, Non-Employment Sexual Abuse, Property Damage, Personal Injury, Public Officials Errors and Omissions*, or Wrongful Employment Practice that occurs anywhere in the world during the *Coverage Period* identified in the applicable Declaration or certificate of coverage.

SECTION VI - EXCLUSIONS

This Memorandum does not apply to:

1. With respect to Pollution:

- (a) Any liability arising out of the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of *Pollutants* anywhere in the world.
- (b) Any loss, cost or expense arising out of any governmental direction or request that the *Agency*, the *Covered Party* or any other person or organization test for, monitor, clean-up, remove, contain, treat, detoxify, neutralize, or assess the effects of *Pollutants*; or
- (c) Any loss, cost, or expense, including but not limited to costs of investigation or attorneys' fees, incurred by a governmental unit or any other person or organization to test for, monitor, clean-up, remove, contain, treat, detoxify, or neutralize *Pollutants*.

However, this exclusion shall not apply to *Bodily Injury* or *Property Damage* caused by a *Covered Party's* response to contamination caused by a third party unrelated to a *Covered Party*. Response includes clean-up, removal, containment, treatment, detoxification, and neutralization of *Pollutants*.

- (d) The exclusions set forth in (a), (b), and (c) above do not apply to the following exceptions to this Exclusion 1:
 - i. If a discharge, dispersal, release, or escape of *Pollutants* meets all of the following conditions:
 - 1. It was accidental and neither expected nor intended by the *Covered Party*; and

2. It was demonstrable as having commenced on a specific date during the term of this policy; and
 3. Its commencement became known to the *Covered Party* within seven (7) calendar days; and
 4. Its commencement was reported in writing to the *Agency* within twenty-one (21) calendar days of becoming known to the *Covered Party*; and
 5. Reasonable effort was expended by the *Covered Party* to terminate the discharge, dispersal, release, or escape of *Pollutants* as soon as conditions permitted.
- ii. To direct and immediate *Bodily Injury* or *Property Damage* arising out of operations involving the use, application or spraying of any pesticide at or from any site or location not owned or controlled by you on which you, or any contractors or subcontractors working directly or indirectly on your behalf, are performing operations if the operations performed meet all standards of any statute, ordinance, regulation, or license requirement of any federal, state or local government which apply to those operations.
- iii. With regard to any actual or alleged violation of the federal Clean Water Act (33 USC sections 1251-1387), the Porter-Cologne Water Quality Control Act (Cal. Water Code sections 13000-14958) or the State Water Resources Control Board General Statewide National Pollutant Discharge Elimination System (NPDES) Permit for Biological and Residual Pesticide Discharges to Waters of the United States from Vector Control Applications arising out of the actual, alleged or threatened discharge of pesticides and resulting in a *Lawsuit* filed by a citizen or a federal or state government agency with jurisdiction enforcing the Clean Water Act, Porter-Cologne Water Quality Control Act or general NPDES permit, the *Agency* will pay *Defense Costs* to the *Covered Party* up to the amount of \$250,000 over the *Retained Limit per Lawsuit*, subject to an aggregate limit of \$1,000,000 per program year for all *Covered Parties*. This exception to Exclusion 1 provides limited defense only coverage for *Lawsuit Defense Costs*. It does not provide any *Defense Costs* or other coverage relating to the investigation of, handling of, or response to a pre-*Lawsuit* notice of an alleged violation or any indemnity for or payment of *Damages*, fines, penalties, civil liability, or opposing party attorney's fees or costs.

The defense-only coverage described in the preceding paragraph shall not be provided to a *Covered Party* with respect to any *Lawsuit* where alleging a violation of the Clean Water Act, the Porter-Cologne Water Quality Control Act or general NPDES permit involving a pesticide discharge and either (1) the *Covered Party* was not enrolled and covered under the applicable State Water Resources Control Board General Statewide National Pollutant Discharge Elimination System (NPDES) Permit for Biological and Residual

Pesticide Discharges to Waters of the United States from Vector Control Applications at the time of the pesticide discharge or (2) the *Covered Party* was not in substantial compliance with the terms and conditions of its general NPDES permit at the time of the pesticide discharge.

- iv. With regard to any actual or alleged violation of the California Environmental Quality Act (CEQA) (Cal. Public Resources Code sections 21000-21177) resulting in a CEQA *Lawsuit* against a *Covered Party*, the *Agency* will provide a defense to the *Covered Party* and pay Defense Costs up to the amount of \$250,000 over the *Retained Limit* per *Lawsuit*, subject to an aggregate limit of \$1,000,000, per program year, all *Covered Parties*. This exception to Exclusion 1 provides limited coverage only for *Lawsuit* Defense Costs. It does not provide any indemnity for or payment of *Damages*, CEQA compliance costs, or opposing party attorney's fees or costs.

In applying the aggregate limits in subsections (iii) and (iv) in the event of multiple *Lawsuits* under those subsections in a single program year, the *Agency* will pay covered *Lawsuit* Defense Costs on a first submitted (i.e., based on the date that the *Agency* receives a bill, invoice or other written request for payment), first paid basis until the aggregate limit is exhausted.

- (e) Nothing contained in this exclusion shall operate to provide any coverage with respect to:
 - i. Any site or location principally used by the *Covered Party*, or by others on the *Covered Party's* behalf, for the handling, storage, disposal, dumping, processing, or treatment of waste material;
 - ii. Any fines or penalties;
 - iii. Any clean-up costs ordered by the Superfund Program, or any federal, state, or local governmental authority. However, this specific exclusion (c) shall not serve to deny coverage for third party clean-up costs otherwise covered by this endorsement simply because of the involvement of a governmental authority;
 - iv. Acid rain;
 - v. Clean-up, removal, containment, treatment, detoxification, or neutralization of *Pollutants* situated on premises the *Covered Party* owns, rents, or occupies at the time of the actual discharge, dispersal, seepage, migration, release, or escape of said *Pollutants*; or
 - vi. Water pollution caused by oil or its derivatives, except as used as authorized under pesticide labeling.

2. Claims, including attorney's fees or salary or wage loss claims, by any potential, present, or former employee or official of the *Covered Party*, arising out of, but not limited to, a violation of civil rights or employment-related practices, policies, acts, or omissions, including termination, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, or discrimination directed at that person. This exclusion extends to claims of the spouse, child, unborn child or fetus, parent, brother, or sister of that person as a consequence of injury to the person at whom any of the employment-related practices, policies, acts, or omissions described above are directed.
3. *Bodily Injury* to:
 - (a) An employee of the *Covered Party* arising out of and in the course of:
 - i. Employment by the *Covered Party*; or
 - ii. Performing duties related to the conduct of the *Covered Party's* business; or
 - (b) The spouse, child, unborn child or fetus, parent, brother, or sister of the employee as a consequence of paragraph (1) above.

This exclusion applies:

- i. Whether the *Covered Party* may be liable as an employer or in any other capacity; and
- ii. To any obligation to share *Damages* with or repay someone else who must pay *Damages* because of the injury.

However, this exclusion does not apply to liability assumed under contract.

4. Any obligation under any workers' compensation, unemployment compensation, or disability benefits law or any similar law.

These exclusions 2 and 4 apply whether the *Covered Party* may be liable as an employer or in any other capacity.

5. Claims because of *Bodily Injury*, *Personal Injury*, or *Property Damage* arising out of ownership, maintenance, management, supervision, or the condition of any airport.
6. Claims arising out of any professional *Medical Malpractice*:
 - (a) Committed by a doctor, osteopath, chiropractor, dentist, or veterinarian; or
 - (b) Committed by any health care provider, as defined in Business & Professions Code Section 6146(c)(2), working for any hospital or hospital operated out-patient, in-patient, or other clinic at the time of the occurrence giving rise to the loss.
7. Claims arising out of the hazardous properties of *Nuclear Material*.

8. Claims arising out of or in connection with inverse condemnation caused by the construction of a public work or public improvement, land use regulation, land use planning, the principles of eminent domain, or condemnation proceedings by whatever name called, resulting from the initiative process, judicial, administrative, or legislative order, or deliberate decision-making conduct of the *Covered Party*, and whether or not liability accrues directly against any *Covered Party* by virtue of any agreement entered into by or on behalf of any *Covered Party*. This exclusion does not apply to inverse condemnation claims for *Property Damage* arising from accidental failure of a *Covered Party's* property or equipment.
9. *Property Damage* to:
 - (a) Property owned by the *Covered Party*;
 - (b) Property rented to or leased by the *Covered Party* where it has assumed liability for damage to or destruction of such property, unless the *Covered Party* would have been liable in the absence of such assumption of liability; and
 - (c) *Aircraft* or watercraft in the *Covered Party's* care, custody, or control.
10. Claims arising out of the ownership, operation, use, maintenance, or entrustment to others of:
 - (a) any *Aircraft* or (b) any watercraft exceeding 50 feet in length. Ownership, operation, use, or maintenance as used herein does not include static displays of aircraft or watercraft in a park or museum setting.
11. Claims arising out of a failure to perform or breach of a contractual obligation.
12. Claims arising out of liability assumed under any contract or agreement, except liability that would be imposed by law in the absence of the contract or agreement, or when such assumption is the subject of a duly issued Certificate of Additional *Covered Party*; but such assumption is covered only up to the *Limit of Coverage* stated in the certificate. This exclusion does not apply to liability assumed in a contract or agreement that is a *Covered Indemnity Contract*, provided the *Bodily Injury* or *Property Damage* occurs subsequent to the execution of the contract or agreement.
13. Fines, assessments, penalties, restitution, disgorgement, exemplary or punitive *Damages*. This exclusion applies whether the fine, assessment, penalty, restitution, disgorgement, exemplary or punitive damage is awarded by a court or by an administrative or regulatory agency. Restitution and disgorgement as used herein refer to the order of a court or administrative agency for the return of a specific item of property or a specific sum of money, because such item of property or sum of money was not lawfully or rightfully acquired by the *Covered Party*.
14. *Ultimate Net Loss* arising out of relief, or redress, in any form other than money *Damages*.
15. Claims arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of or exposure to radon, asbestos, asbestos products, asbestos fibers, asbestos dust, or other asbestos containing materials, or:

- (a) any obligation of the *Covered Party* to indemnify any party because of such claims, or
 - (b) any obligation to defend any suit or claims against the *Covered Party* because of such claims.
16. Claims for injury or *Damages* caused by intentional conduct done by the *Covered Party* with willful and conscious disregard of the rights or safety of others, or with malice. However, where the *Covered Party* did not authorize, ratify, participate in, consent to, or have knowledge of such conduct by its past or present employee, elected or appointed official, or volunteer, and the claim against the *Covered Party* is based solely on its vicarious liability arising from its relationship with such employee, official, or volunteer, this exclusion does not apply to said *Covered Party*.
 17. Claims by any *Covered Party* against its own past or present elected or appointed officials, employees, volunteers, or additional covered parties where such claim seeks *Damages* payable to the *Covered Party*.
 18. Claims arising out of oral or written publication of material, if done by or at the direction of the *Covered Party* with knowledge of its falsity.
 19. Claims arising out of liability imposed on any *Covered Party* under any uninsured/underinsured motorist law or *Automobile* no-fault law.
 20. The cost of providing reasonable accommodation pursuant to the Americans with Disabilities Act, Fair Employment and Housing Act, or similar law.
 21. Refund or restitution of taxes, fees, or assessments.
 22. Claims for refund, reimbursement, or repayment of any monies to which a *Covered Party* was not legally entitled.
 23. Claims arising in whole or in part out of the violation of a statute, ordinance, order, or decree of any court or other judicial or administrative body, or rule of law, committed by or with the knowledge or consent of the *Covered Party* (except as otherwise provided by the exceptions in section VI(1)(d)).
 24. Claims arising out of estimates of probable cost or cost estimates being exceeded or faulty preparation of bid specifications or plans including architectural plans.
 25. Under *Public Officials Errors and Omissions Coverage*:
 - (a) *Bodily Injury, Non-Employment Sexual Abuse, Personal Injury*, or physical injury to tangible property, including all resulting loss of use of that property.
 - (b) Benefits payable under any employee benefit plan.

26. Claims arising out of the ownership, operation, use, maintenance, or entrustment to others of an *Unmanned Aircraft System*. However, this exclusion shall not apply if all of the following conditions are met with respect to any use or operation of an *Unmanned Aircraft System* which gives rise to a claim:
- (a) The *Unmanned Aircraft System* is operated in compliance with applicable federal, state, and local laws, rules and regulations, including but not limited to Federal Aviation Administration (FAA) rules and regulations.
 - (b) The operation of the Unmanned Aircraft System is in the course of legitimate activity which was approved by a member employee or official, which employee or official was acting in a management or supervisory role when approving the operation of the *Unmanned Aircraft System*.
 - (c) The Governing Body of the member before use has approved use of *Unmanned Aircraft Systems*.

The exclusions in this section VI do not apply to *Wrongful Employment Practices* coverage as described in sections I and II and the Employment Risk Management Authority Memorandum of Coverage. Rather, the applicable coverage exclusions are those set forth in the Employment Risk Management Authority Memorandum of Coverage.

SECTION VII - CONDITIONS

1. *Covered Party's Duties in the Event of Occurrence, Claim, or Suit*
- (a) The *Covered Party* shall notify the *Agency* within 30 days upon receipt of notice of a claim, or the establishing of a reserve on any claim or suit (including multiple claims or suits arising out of one *Occurrence*), such claim or reserve amounting to fifty percent or more of the *Retained Limit*; Title 42 U.S.C. 1983 cases in which a complaint has been served or with reserves of twenty-five percent or more of the *Retained Limit*; or regardless of reserve, any *Occurrence* involving:
 - i. One or more fatalities,
 - ii. Loss of a limb or amputations,
 - iii. Loss of use of any sensory organ,
 - iv. Spinal cord injuries (quadriplegia or paraplegia),
 - v. Third degree burns involving ten percent or more of the body,
 - vi. Serious facial disfigurement,
 - vii. Paralysis,
 - viii. Closed head injuries,
 - ix. Serious loss of use of any body function,
 - x. Long-term hospitalization, or
 - xi. *Non-Employment Sexual Abuse* conduct.

Written notice containing particulars sufficient to identify the *Covered Party* and also reasonably obtainable information with respect to the time, place, and circumstances

thereof, and the names and addresses of the *Covered Party* and of available witnesses, shall be given to the *Agency* or any of its authorized agents as soon as possible.

- (b) If a claim is made or suit is brought against the *Covered Party* and such claim or suit falls within the descriptions in paragraph (a) above, the *Covered Party* shall be obligated to forward to the *Agency* every demand, notice, summons, or other process received by it or its representative.
- (c) The *Covered Party* shall cooperate with the *Agency* and upon its request assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the *Covered Party* because of *Bodily Injury, Personal Injury, Property Damage, or Public Officials Errors and Omissions* with respect to which coverage is afforded under this Memorandum; and the *Covered Party* shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- (d) The *Agency* shall be entitled to complete access of the *Covered Party's* claim file, the defense attorney's complete file, and all investigation material and reports, including all evaluations and information on negotiations. The *Covered Party* shall be responsible to report on the progress of the litigation and any significant developments at least quarterly to the *Agency*, and to provide the *Agency* with simultaneous copies of all correspondence provided to the *Covered Party* by its defense attorneys and/or agents.

2. Bankruptcy or Insolvency

Bankruptcy or insolvency of the *Covered Party* shall not relieve the *Agency* of any of its obligations hereunder.

3. Other Coverage

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

This coverage shall be in excess of, and shall not contribute with, any insurance or coverage which names a *Covered Party* herein as an additional *Covered Party* or additional insured party, where coverage is extended to a loss also covered hereunder.

4. Severability of Interests

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

5. Accumulation of Limits

A claim which contains allegations extending to a duration of more than one *Coverage Period* shall be treated as a single *Occurrence* arising during the first *Coverage Period* when the *Occurrence* begins.

6. Termination

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

7. Changes

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

8. Subrogation

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

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

9. Arbitration

Decisions by the *Agency* whether to assume control of the negotiation, investigation, defense, appeal, or settlement of a claim, or whether or not coverage exists for a particular claim or part of a claim shall be made by the Board of Directors of the *Agency*.

Any dispute concerning a decision of the *Agency* to deny coverage for all or part of a claim shall not be subject to any court action, but shall instead be submitted to binding arbitration. The *Covered Party* must exhaust the right to appeal to the Board of Directors before requesting arbitration of a dispute.

Arbitration shall be conducted pursuant to the California Code of Civil Procedure. Arbitration shall be conducted by a three-person panel. The *Covered Party* or parties shall

select one arbitrator and the *Agency* shall select one arbitrator, and the two arbitrators shall select a third arbitrator upon mutual agreement. No arbitrator shall be employed or affiliated with the *Agency* or the *Covered Party* or parties.

The selection of arbitrators shall take place within twenty (20) calendar days from the receipt of the request for arbitration. The arbitration hearing shall commence within forty-five (45) calendar days from the date of the selection of the arbitrators.

Each party shall bear the cost of its selected arbitrator and one-half the cost of the third selected arbitrator. In addition, each party shall be responsible for its own costs and expenses of arbitration.

Except for notification of appointment and as provided in the California Code of Civil Procedure, there shall be no communication between the "parties" and the arbitrator(s) relating to the subject of the arbitration other than at oral hearings.

The procedures set forth in California Code of Civil Procedure Section 1293.05 relating to depositions and discovery shall apply to any arbitration pursuant to this paragraph 9.

Except as provided otherwise above, arbitration shall be conducted as provided in Title 9 of the Code of Civil Procedure (commencing with Section 1280).

The decision of the panel of arbitrators shall be final and binding, and shall not be subject to appeal.

**VECTOR CONTROL JOINT POWERS AGENCY
MEMORANDUM OF COVERAGE**

**POOLED LIABILITY PROGRAM
ENDORSEMENT NO. 1**

It is understood that the Named Covered Party of the Declarations is completed as follows:

Vector Control Joint Powers Agency,

<u>Member</u>	<u>Retained Limit</u>
Alameda County Mosquito Abatement District	\$ 10,000
Burney Basin Mosquito Abatement District	\$ 1,000
Butte County Mosquito and Vector Control District	\$ 10,000
Coachella Valley Mosquito and Vector Control District	\$ 25,000
Coalinga-Huron Mosquito Abatement District	\$ 1,000
Colusa Mosquito Abatement District	\$ 1,000
Compton Creek Mosquito Abatement District	\$ 2,500
Consolidated Mosquito Abatement District	\$ 10,000
Contra Costa Mosquito and Vector Control District	\$ 50,000
Delta Mosquito and Vector Control District	\$ 5,000
Durham Mosquito Abatement District	\$ 1,000
Fresno Mosquito and Vector Control District	\$ 5,000
Glenn County Mosquito and Vector Control District	\$ 1,000
Greater Los Angeles County Vector Control District	\$ 75,000
Kings Mosquito Abatement District	\$ 5,000
Lake County Vector Control District	\$ 2,500
Los Angeles County West Vector Control District	\$ 25,000
Marin-Sonoma Mosquito and Vector Control District	\$ 50,000
Monterey County Mosquito Abatement District	\$ 5,000
Mosquito and Vector Management District of Santa Barbara County	\$ 2,500
Napa County Mosquito Abatement District	\$ 5,000
Northwest Mosquito and Vector Control District	\$ 5,000
Orange County Mosquito and Vector Control District	\$ 25,000
Pine Grove Mosquito Abatement District	\$ 1,000
Placer Mosquito and Vector Control District	\$ 1,000
Sacramento-Yolo Mosquito and Vector Control District	\$ 50,000
San Gabriel Valley Mosquito and Vector Control District	\$ 10,000
San Joaquin County Mosquito and Vector Control District	\$ 50,000
San Mateo County Mosquito and Vector Control District	\$ 10,000
Shasta Mosquito and Vector Control District	\$ 2,500
Sutter-Yuba Mosquito and Vector Control District	\$ 10,000
Tehama County Mosquito and Vector Control District	\$ 1,000
Turlock Mosquito Abatement District	\$ 10,000
West Valley Mosquito and Vector Control District	\$ 10,000

Attached to and Forming Part of Policy No. VCJPA 2023-1GL

Effective Date: July 1, 2023



Authorized Representative

EMPLOYMENT RISK MANAGEMENT AUTHORITY

(ERMA)

MEMORANDUM OF COVERAGE

FOR THE 2023/2024 PROGRAM YEAR

EFFECTIVE JULY 1, 2023

EMPLOYMENT RISK MANAGEMENT AUTHORITY

MEMORANDUM OF COVERAGE

LIABILITY COVERAGE

DECLARATIONS

ERMA 2023-1EPL

NAMED COVERED PARTY: Employment Risk Management Authority, et al., as
per Endorsement No. 1 and Endorsement No. 2.

1750 Creekside Oaks, Dr., #200
Sacramento, CA 95833

COVERAGE PERIOD: From 7-1-2023 to 7-1-2024
12:01 a.m. Pacific Standard Time

LIMITS OF COVERAGE: \$1,000,000 Each Occurrence Less Member's
Retained Limit Listed in Endorsement No. 1 and
Endorsement No. 2, except as set forth in
Endorsement No. 3.*

FORM AND ENDORSEMENTS: Form No. ERMA 2023-1EPL, Endorsements
No. 1, No. 2, and No. 3

Forming Part of the coverage at Inception

ON BEHALF OF EMPLOYMENT RISK MANAGEMENT AUTHORITY



AUTHORIZED REPRESENTATIVE

* CalTIP, CSJVRMA, MBASIA, MPA, PLAN, VCJPA, Housing Authority of Contra Costa County, and Oakland Housing Authority purchase claims-made excess insurance through RSUI with limits of \$2 million each claim per member; additional excess insurance of \$1 million each claim per member through Ascot Specialty Insurance; \$5 million per member aggregate; and a \$15 million policy aggregate. This purchased insurance is subject to terms and conditions that may differ from this Memorandum of Coverage.

Table of Contents

SECTION I - COVERAGE	3
SECTION II - DEFINITIONS.....	3
SECTION III - DEFENSE AND SETTLEMENT	8
SECTION IV - ERMA'S <i>LIMIT OF COVERAGE</i>	8
SECTION V - <i>COVERAGE PERIOD</i> AND TERRITORY	9
SECTION VI - EXCLUSIONS	9
SECTION VII – CONDITIONS	11
SECTION VIII – MISCELLANEOUS PROVISIONS.....	17

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

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

SECTION I - COVERAGE

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

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

SECTION II - DEFINITIONS

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

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

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

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

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

4 "Covered Party" means:

(A) The *Member* and any additional entities named in the Declarations page.

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

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

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

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

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

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

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

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

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

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

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

The exclusion of independent contractors or subcontractors from the definition of *Employee* shall not apply to a *Claim* for sexual harassment specifically authorized under Cal. Gov. Code section 12940 (j), but this exception does not apply to any other types of harassment mentioned in subdivision (j).

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

resolution of a *Claim* or suit, the *Authority* will pay only up to the amount stated in the Declarations in present value of the *Claim*, as determined on the date of settlement, regardless of whether the full value of the settlement exceeds the amount stated in the Declarations.

9 “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.

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

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

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

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

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

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

14 “Wrongful Employment Practice” means any tortious act, omission, or policy related to the employment of an *Employee*, including but not limited to harassment, discrimination, retaliation, violation of civil rights, defamation, invasion of privacy, infliction of emotional distress, and/or wrongful termination in violation of public policy. *Wrongful Employment Practice* does not include breach of an express contract, unless such breach would give rise to tort liability in the absence of the contract. Also, *Wrongful Employment Practice* does not include any act or omission in the administration of an employee benefit program.

SECTION III - DEFENSE AND SETTLEMENT

The *Authority* shall have no duty to assume charge of investigation or defense of any *Claim*. However, the *Authority* shall have the right to assume the control of the negotiation, investigation, defense, appeal,

or settlement of any *Claim* the *Authority* determines, in its sole discretion, to have reasonable probability of resulting in an *Ultimate Net Loss* in excess of the applicable *Retained Limit*. The *Covered Parties* shall fully cooperate in all matters pertaining to such *Claim* or proceeding. Such cooperation shall include, but not be limited to, executing all documents necessary to effectuate a settlement. If the *Covered Party's* lack of cooperation prevents settlement of the claim for a reasonable amount, defined as the amount the *Authority* is willing to pay and the claimant is willing to accept, and increases the potential liability for *Damages* and continued *Defense Costs*, the *Covered Party* shall pay or shall reimburse the *Authority* for those *Defense Costs* incurred after the claim could have been settled, and for any *Damages* awarded or settlement agreed upon in excess of the amount for which the claim could have been settled, or, in the alternative, the *Authority* shall have the right to tender the claim back to the *Covered Party* and coverage shall cease.

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

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

SECTION IV - ERMA'S LIMIT OF COVERAGE

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

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

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

SECTION V - COVERAGE PERIOD AND TERRITORY

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

SECTION VI - EXCLUSIONS

This Memorandum does not cover:

1. **Bodily Injury.** We do not cover *Claims*:

- (A) for bodily injury, sickness, disease or death of any person; or
- (B) brought by the person's domestic partner, spouse, child, parent, brother or sister as a result of such bodily injury, sickness, disease or death.

This does not apply to *Claims* for emotional distress, mental anguish or humiliation that arise from a *Wrongful Employment Practice*.

2. **Compliance with ADA Requirements.** We do not cover any costs or expenses incurred to make premises accessible to persons with disabilities as required by:

- (A) the Americans with Disabilities Act of 1990;
- (B) any similar federal, state or local law;
- (C) any amendments to such laws; or
- (D) any regulations promulgated under any such laws.

3. **Contractual Liability.** We do not cover the liability of others assumed by the *Covered Party* in a contract or agreement. This does not apply to liability that the *Covered Party* would have had in the absence of the contract or agreement.

4. **ERISA, COBRA, WARN Act, and FLSA Liability.** We do not cover any liability imposed on the *Covered Party* under:

- (A) the Employee Retirement Income Security Act of 1974;
- (B) the Comprehensive Omnibus Budget Reconciliation Act;
- (C) the Worker Adjustment and Retraining Notification Act;
- (D) the Fair Labor Standards Act;
- (E) any similar federal, state or local laws;
- (F) any amendments to such laws; or
- (G) any regulations promulgated under any such laws.

5. **Fines, Multiplied Damages, or Non-Monetary Relief.** We do not cover:
 - (A) fines, taxes, penalties, or liquidated Damages;
 - (B) the multiplied portion of any Damage award that is subject to a multiplier;
 - (C) non-monetary relief; or
 - (D) any punitive damages or other uninsurable amounts.
6. **Intentional Conduct Done with Willful and Conscious Disregard.** We do not cover *Claims* for injury or *Damages* caused by intentional conduct done by the *Covered Party* with willful and conscious disregard of the rights or safety of others, or with malice. However, where the *Covered Party* did not authorize, ratify, participate in, consent to, or have knowledge of such conduct by its *Employee*, and the *Claim* against the *Covered Party* is based solely on its vicarious liability arising from its relationship with such *Employee*, this exclusion does not apply to said *Covered Party*.
7. **Intentional Violations of Laws and Orders.** We do not cover *Claims* that arise out of a *Covered Party's* intentional failure to comply with, or reckless disregard of, any law, order or regulation relating to employment practices.
8. **Prior Wrongful Employment Practices.** We do not cover liability arising out of any *Claim*, fact, circumstance, situation, transaction or event concerning a *Wrongful Employment Practice* of which any *Covered Party* had received a prior *Claim*, or which was the subject of any notice given under any insurance policy or coverage prior to the *Covered Party* obtaining coverage under this Memorandum.
9. **Property Damage.** We do not cover *Claims* for damage to or destruction of any tangible property, including loss of its use.
10. **Strikes and Lockouts.** We do not cover *Claims* that arise out of a lockout, strike, picket line, replacement or other similar actions resulting from labor disputes or labor negotiations.
11. **Ultimate Net Loss.** We do not cover *Ultimate Net Loss* arising out of relief, or redress, in any form other than money *Damages* or seeking only injunctive or non-monetary relief, regardless of whether a prevailing claimant may be entitled to recover attorney's fees and costs.
12. **Actions for Administrative or Equitable Relief.** We do not cover any action, in any forum, for injunctive, administrative, declaratory, or other non-monetary form of relief, including specific performance, nor hearings of internal administrative matters or actions involving the review of any final administrative order or decision made as the result of an administrative hearing, regardless of whether such action seeks *Damages* or attorneys' fees. This exclusion is in addition to, and does not conflict with, Exclusion 11, above.

13. **Workers' Compensation or Similar Law.** We do not cover obligations under a workers' compensation law, Labor Code 132a, disability benefits or unemployment compensation law, or any similar law. This exclusion does not apply to retaliation or discrimination for filing a workers' compensation *Claim* or a *Claim* for disability benefits.
14. **Actions by Inmates or Prisoners.** We do not cover *Claims* for injury or *Damages* brought by any person:
 - (A) performing labor or services, either voluntarily or involuntarily, while incarcerated in any state or local correctional or penal institution or facility; or
 - (B) performing labor or services, either voluntarily or involuntarily, as a condition of or in satisfaction of any penal sentence.
15. **Vaccination.** We do not cover *Claims* that arise out of the *Covered Party's* acts to encourage or require vaccination of *Employees* or others, or the failure to take such actions.
16. **California Wage and Hour and Related Claims.** We do not cover *Claims* for violation of California laws governing minimum wages, overtime, meal and rest breaks, vacation pay, paid time off, sick pay, time records, wage statements, payment upon termination of employment, or reimbursement of business expenses, whether imposed by the California Labor Code, California Wage Orders, or other similar laws, but this exclusion does not apply to *Claims* for retaliation for opposing such violations. This exclusion does not apply to *Defense Costs* for such *Claims*.

SECTION VII – CONDITIONS

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

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

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

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

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

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

- (1) Late reported *Claims* are strongly disfavored. Relief from denial of coverage for a *Claim* reported more than 90 days late shall not be granted, absent extraordinary circumstances as determined by the Board, in its sole discretion.

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

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

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

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

PENALTY STRUCTURE

SIR	Penalty	Percentage of Penalty to SIR
\$25,000	\$6,250	25%
\$50,000	\$12,500	25%
\$75,000	\$18,750	25%
\$100,000	\$25,000	25%
\$250,000	\$37,500	15%
\$350,000	\$52,500	15%
\$500,000	\$50,000	10%

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

- (C) If a suit is brought against the *Covered Party*, in addition to the information required by subparagraph (A), the *Covered Party* shall be obligated to forward immediately to the *Authority* every demand, notice, summons, or other process received by it or its representative.

- (D) The *Covered Party* shall cooperate with the *Authority* and upon its request assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the *Covered Party* because of *Wrongful Employment Practice* with respect to which coverage is afforded under this Memorandum. The *Covered Party* shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. In all matters in which the *Authority* has selected defense counsel, the *Covered Party* shall refrain from interference with the *Authority's* control of the defense, and shall cooperate fully with the defense counsel and the *Authority* in respect to the defense of the *Covered Parties* in the *Claim* or suit.

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

- (E) The *Authority* shall be entitled to complete access of the *Covered Party's Claim* file, the defense attorney's complete file, and all investigation material and reports, including all evaluations and information on negotiations. The *Covered Party through assigned defense counsel* shall be responsible to report on the progress of the litigation and any significant developments to the *Authority*, and to provide the *Authority* with simultaneous copies of all correspondence provided to the *Covered Party* by its defense attorneys and/or agents.
- (F) If the *Covered Party* is not in substantial compliance with the requirements of Government Code §12950.1 (AB 1825) during the *Coverage Period* for an *Occurrence* related to that code section, the Board shall increase the *Covered Party's Retained Limit* as follows:

PENALTY STRUCTURE

SIR	Penalty	Percentage of Penalty to SIR
\$25,000	\$6,250	25%
\$50,000	\$12,500	25%
\$75,000	\$18,750	25%
\$100,000	\$25,000	25%
\$250,000	\$37,500	15%
\$350,000	\$52,500	15%
\$500,000	\$50,000	10%

Proof of substantial compliance shall be provided at the request of the *Authority* and in the form set forth in Resolution No. 2021-5, or any superseding Resolution, which requires documentation to confirm compliance with the sexual harassment training mandated by State law.

2. Bankruptcy or Insolvency

Bankruptcy or insolvency of the *Covered Party* shall not relieve the *Authority* of any of its obligations hereunder.

3. Other Coverage

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

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

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

4. Accumulation of Limits

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

5. Severability of Interests

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

6. Subrogation

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

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

7. Arbitration

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

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

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

Arbitration shall be conducted pursuant to the California Code of Civil Procedure. Arbitration shall be conducted by a single arbitrator. No arbitrator shall be employed or affiliated with the *Authority* or the *Covered Party(ies)* or any Member of the Authority.

The selection of the arbitrator shall take place within twenty (20) calendar days from the receipt of the request for arbitration. The arbitration hearing shall commence within forty-five (45) calendar days from the date of the selection of the arbitrator.

Each party shall bear one-half the cost of the selected arbitrator. In addition, each party shall be

responsible for its own attorneys' fees, costs and expenses of arbitration.

In the event that the *Member* prevails in the coverage dispute in the arbitration, the following shall apply to any monetary award in the *Member's* favor:

- (A) Any interest awarded shall be at the Local Agency Investment Fund (LAIF) rate + 1% in effect at the time of the award;
- (B) Any attorneys' fees award for *Defense Costs* of the underlying *Claim* above the *Member's Retained Limit* shall be subject to all provisions of the ERMA Litigation Management Guidelines and shall not exceed the hourly rate established by the ERMA Litigation Management Guidelines in effect at the time of the *Occurrence* of the underlying *Claim*;
- (C) Any award shall be subject to and shall not exceed the *Defense Costs* and indemnity *Coverage* under the *Limit of Coverage* afforded under the ERMA Memorandum in effect at the time of the *Occurrence* of the underlying *Claim*;
- (D) No award at the arbitration shall be permitted for damages of any nature or in any amount other than as expressly allowed in this Section VII, subsection 7. By way of example, and without limitation, no award shall be permitted for consequential damages, extra contractual damages, tort damages or damages for any alleged breach of the implied covenant of good faith and fair dealing; and
- (E) Any award for *Defense Costs* and/or indemnity with respect to the underlying *Claim* shall be treated the same for purposes of the determination of the *Member's* Ex Mod or premium calculation, as if the *Claim* had been originally covered by ERMA.

Except for notification of appointment and as provided in the California Code of Civil Procedure, there shall be no communication between the parties and the arbitrator relating to the subject of the arbitration other than at oral hearings.

The procedures set forth in California Code of Civil Procedure Section 1283.05 relating to depositions and discovery shall apply to any arbitration pursuant to this paragraph 8.

Except as provided otherwise above, arbitration shall be conducted as provided in Title 9 of the Code of Civil Procedure (commencing with Section 1280).

The decision of the arbitrator shall be final and binding, and shall not be subject to appeal.

SECTION VIII – MISCELLANEOUS PROVISIONS

1. Termination

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

2. Changes

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

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

This endorsement, effective 12:01 a.m. 7/1/2023, forms a part of ERMA 2023-1EPL. It is understood that the named Covered Party of the Declarations and the “Retained Limits” for the Covered Parties are completed as follows:

Employment Risk Management Authority,

Bay Cities Joint Powers Insurance Authority (BCJPIA)

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

California Transit Indemnity Pool (CalTIP)

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

California Intergovernmental Risk Authority (CIRA)

COVERED PARTY	RETENTION
City of Amador	\$250,000
City of Arcata	\$250,000
City of Avalon	\$250,000
City of Belvedere	\$250,000
City of Blue Lake	\$250,000
City of Calimesa	\$250,000
City of Calistoga	\$250,000
City of Citrus Heights	\$250,000
City of Clearlake	\$250,000
City of Cloverdale	\$250,000
City of Coalinga	\$250,000
City of Cotati	\$250,000
City of Eureka	\$250,000
City of Ferndale	\$250,000
City of Fort Bragg	\$250,000
Foresthill Fire Protection District	\$250,000
City of Fortuna	\$250,000
City of Grass Valley	\$250,000
City of Highland	\$250,000
City of Healdsburg	\$250,000
City of Lakeport	\$250,000
City of Menifee	\$250,000
Mosquito Fire Protection District	\$250,000
City of Nevada City	\$250,000
City of Placentia	\$250,000
City of Placerville	\$250,000
City of Plymouth	\$250,000
City of Point Arena	\$250,000
City of Rancho Cucamonga	\$250,000
Rancho Cucamonga Fire Protection District	\$250,000
City of Rancho Santa Margarita	\$250,000
City of Rohnert Park	\$250,000
City of San Juan Bautista	\$250,000
City of Sebastopol	\$250,000
City of Sierra Madre	\$250,000
City of Sonoma	\$250,000
City of South Lake Tahoe	\$250,000
City of St. Helena	\$250,000
City of Tehama	\$250,000
City of Trinidad	\$250,000
City of Truckee	\$250,000

City of Twentynine Palms	\$250,000
City of Ukiah	\$250,000
City of Watsonville	\$250,000
City of Wheatland	\$250,000
Wheatland Fire Authority	\$250,000
City of Wildomar	\$250,000
City of Willits	\$250,000
Town of Windsor	\$250,000
Town of Yountville	\$250,000
City of Yucaipa	\$250,000
Town of Yucca Valley	\$250,000

Central San Joaquin Valley Risk Management Authority (CSJVRMA)

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

Exclusive Risk Management Authority of California (ERMAC)

COVERED PARTY	RETENTION
City of Beaumont	\$500,000
City of Hayward	\$500,000
City of Santa Maria	\$500,000

Monterey Bay Area Self Insurance Authority (MBASIA)

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

Municipal Pooling Authority (MPA)

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

Public Entity Risk Management Authority (PERMA)

COVERED PARTY	RETENTION
City of Banning	\$25,000
City of Barstow	\$25,000
City of Canyon Lake	\$25,000
City of Cathedral City	\$25,000
City of Coachella	\$25,000
City of Colton	\$500,000
City of Desert Hot Springs	\$25,000
City of Eastvale	\$25,000
City of Hesperia	\$50,000
City of Holtville	\$25,000
Imperial County Transportation Commission	\$25,000
City of Jurupa Valley	\$25,000
City of La Mesa	\$25,000
City of Murrieta	\$100,000
City of Norco	\$100,000
Palm Springs Aerial Tramway	\$25,000
City of Perris	\$25,000
City of Rancho Mirage	\$50,000
San Diego Regional Training Center	\$25,000
City of San Jacinto	\$25,000
SunLine Transit Agency	\$50,000
Victor Valley Transit Authority	\$25,000
City of Victorville	\$25,000

Pooled Liability Assurances Network (PLAN)

COVERED PARTY	RETENTION
City of American Canyon	\$50,000
Town of Atherton	\$100,000
Town of Los Altos Hills	\$75,000
Town of Woodside	\$50,000

Small Cities Organized Risk Effort (SCORE)

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

Vector Control Joint Powers Agency (VCJPA)

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

Individual Entities

COVERED PARTY

RETENTION

Oakland Housing Authority

\$50,000

Contra Costa County Housing Authority

\$50,000

Effective Date: July 1, 2023

Endorsement No.: 1



AUTHORIZED REPRESENTATIVE

EMPLOYMENT RISK MANAGEMENT AUTHORITY
MEMORANDUM OF COVERAGE
ENDORSEMENT #2

This endorsement, effective 12:01 a.m. 7/1/2023, forms a part of ERMA 2023-1EPL.

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

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

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

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

Effective Date: July 1, 2023

Endorsement No.: 2



AUTHORIZED REPRESENTATIVE

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

This endorsement, effective 12:01 a.m. 7/1/2023, forms a part of ERMA 2023-1EPL.

It is understood that for the following Covered Parties, the limit of coverage is \$750,000 per *Occurrence*.

Small Cities Organized Risk Effort (SCORE)

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

Effective Date: July 1, 2023

Endorsement No.: 3



AUTHORIZED REPRESENTATIVE