

EMPLOYMENT RISK MANAGEMENT AUTHORITY

MEMORANDUM OF COVERAGE

LIABILITY COVERAGE

DECLARATIONS

POLICY NO. ERMA 2011-1EPL

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 7-1-2011 to 7-1-2012
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 2011-1EPL, Endorsements
No. 1, No. 2, and No. 3

Forming Part of the Policy at Inception

ON BEHALF OF EMPLOYMENT RISK MANAGEMENT AUTHORITY



AUTHORIZED REPRESENTATIVE

*The CSJVRMA, MBASIA, MPA, VCJPA, Housing Authority of Contra Costa County, and Oakland Housing Authority purchase claims-made excess insurance through RSUI Indemnity Company with limits of \$1 million each claim per member; \$2 million per member aggregate; and a \$10 million policy aggregate. This purchased insurance is subject to terms and conditions that may differ from this Memorandum of Coverage.

EMPLOYMENT RISK MANAGEMENT AUTHORITY

(ERMA)

MEMORANDUM OF COVERAGE

FOR THE 2011/2012 PROGRAM YEAR

EFFECTIVE JULY 1, 2011

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

TABLE OF CONTENTS

<u>SECTION I - COVERAGE</u>	1
<u>SECTION II - DEFINITIONS</u>	1
<u>SECTION III - DEFENSE AND SETTLEMENT</u>	6
<u>SECTION IV - ERMA'S <i>LIMIT OF COVERAGE</i></u>	7
<u>SECTION V - <i>COVERAGE PERIOD AND TERRITORY</i></u>	7
<u>SECTION VI - EXCLUSIONS</u>	7
<u>SECTION VII - CONDITIONS</u>	10
<u>SECTION VIII - MISCELLANEOUS PROVISIONS</u>	14

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

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

SECTION I - COVERAGE

The *Authority* will pay up to the *Limit of Coverage* those sums on behalf of the *Covered Party* for the *Ultimate Net Loss*, less the *Retained Limit*, that the *Covered Party* becomes legally obligated to pay as *Damages* because of *Wrongful Employment Practice*, as that term is 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 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.

SECTION II - DEFINITIONS

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

Claim does not include a *Union Grievance*, or any type of criminal proceeding, or any claim arising under the FLSA or any California Wage Orders or any similar federal or state law.

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

3. "Coverage Period" means that term prescribed for coverage by the *Authority* as set forth in the Declarations page.
4. "Covered Party" means:
 - (A) All entities named in the Declarations page, including any and all commissions, agencies, districts, authorities, boards (including the governing board).
 - (B) Any person who is an *Employee* of a *Covered Party* identified in Section (A) herein, whether or not compensated, while acting in an official capacity for or on behalf of such *Covered Party*, including while acting on any outside board at the direction of such *Covered Party*.

Covered Party shall not include any person, whether or not compensated, who is not acting in the course and scope of his or her employment or whose conduct, as a matter of law, is not within the course and scope of his or her employment by the *Covered Party* at the time of the act or acts alleged in a *Claim*.
 - (C) All entities named in Endorsement #2, and any officer, director or employee thereof while acting in an official capacity for or on behalf of such entity and in the course and scope of his or her duties. Except for those expressly identified in Endorsement #2, no other person, organization, or entity shall be deemed to be a "Covered Party" under Endorsement #2.
 - (D) Notwithstanding sections (B) and (C) above, the defense and indemnity coverage afforded by this Memorandum to a past or present *Employee* of a *Covered Party* is not broader than the *Covered Party's* duty to defend and indemnify its *Employee*, pursuant to California Government Code Section 815, 815.3, 825 to 825.6, 995 to 996.6, inclusive, and any amendments thereof. If the *Covered Party* which employs the *Employee* is not obligated under the California Government Code to provide a defense or to provide indemnity for a *Claim*, or if said *Covered Party* refuses to provide such defense and/or indemnity to said *Employee*, then this Memorandum shall not provide any such defense or indemnity coverage to said *Employee*. All immunities, defenses, rights, and privileges afforded to a *Covered Party* under California Government Code Section 815, 815.3, 825 to 825.6, 995 to 996.6, inclusive, and any amendments thereof, shall be afforded to the *Authority* to bar any defense or indemnity coverage under this Memorandum to that *Covered Party's Employee*.
5. "Damages" means compensation in money which a *Covered Party* is legally obligated to pay as a result of a *Claim*. *Damages* include: (1) attorney fees not based on contract, awarded against the *Covered Party*, (2) interest on judgments, or (3) costs for which the

Covered Party is liable either by adjudication, or by compromise with the written consent of the *Authority*, if the fees, interest, or costs arise from an *Occurrence* to which this coverage applies.

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

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

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

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

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

7. *“Discrimination”* means termination of the employment relationship, a demotion, a failure or refusal to hire or promote, denial of an employment benefit, or the taking of any adverse or differential employment action because of race, color, creed, religion, age, sex, disability, pregnancy, sexual orientation, national origin, AIDS, or other protected category or characteristic established pursuant to any applicable federal, state, or local statute or ordinance.
8. *“Employee”* means any person whose labor or services is engaged and directed by a *Covered Party*, whether past, present or future, including a volunteer, official, or applicant for employment. This includes part-time, seasonal, and temporary labor or services, as well

as any person employed in a supervisory, managerial, or confidential position. *Employee* shall not include leased employees, independent contractors or subcontractors, agents, or servants of any *Covered Party*, unless the *Covered Party* has the right to and does control and direct the details of their work rather than the result of that work. *Employee* also shall not include the spouse, child, unborn fetus, parent, brother, or sister of the *Employee*.

9. “Harassment” means:
- (A) unwelcome sexual advances, requests for sexual favors, or other verbal, visual or physical conduct of a sexual nature, including those which:
 - (1) are made a condition of employment with the *Covered Party*;
 - (2) are used as a basis for employment decisions by the *Covered Party*; or
 - (3) create a work environment by a *Covered Party* that interferes with performance or creates an intimidating, hostile or offensive working environment; or
 - (B) workplace conduct (i.e. *Harassment* of a non-sexual nature) committed by a *Covered Party* in violation of law or because of any protected category or characteristic which creates a work environment that interferes with performance, or creates an intimidating, hostile, or offensive working environment.
10. “Limit of Coverage” shall be the amount of coverage stated in the Declarations Page, or sublimits as stated therein for each *Covered Party* per *Occurrence*, subject to any lower sublimit stated in this Memorandum. The *Limit of Coverage* shall include the *Covered Party’s Retained Limit*. For each *Occurrence*, there shall be only one *Limit of Coverage* regardless of the number of claimants or *Covered Parties* against whom a *Claim* is made, or the number of *Coverage Periods* through which the *Occurrence* continues. In the event that a structured settlement, whether purchased from or through a third-party, or paid directly by the *Covered Party* in installments, is utilized in the resolution of a *Claim* or suit, the *Authority* will pay only up to the amount stated in the Declarations in present value of the *Claim*, as determined on the date of settlement, regardless of whether the full value of the settlement exceeds the amount stated in the Declarations.
11. “Occurrence” means an act, policy, or course of conduct by a *Covered Party* during the *Coverage Period* which results in a *Claim* for *Wrongful Employment* if the first act, policy or course of conduct occurred during the *Coverage Period*. All allegations by the same *Employee* in the same *Claim* shall be considered one *Occurrence* for the purpose of the *Limit of Coverage*, and such *Occurrence* shall be deemed to exist on the date of the alleged first act, policy, or conduct, in the event of an allegation of multiple acts, policies, or course of conduct.

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

12. “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.

13. “Retaliation” means retaliatory treatment against an *Employee* of the *Covered Party* on account of such *Employee’s* exercise or attempted exercise of his or her rights under the law.
14. “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.
15. “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.
16. “Workplace Tort” means any of the following acts alleged to have been committed in violation of law or because of any protected category or characteristic:
- (A) actual or constructive termination of an employment relationship in a manner which is alleged to have been against the law or wrongful, or in breach of an implied employment contract or breach of the covenant of good faith and fair dealing in the employment contract;
 - (B) allegations of negligent or wrongful evaluation, wrongful demotion, wrongful discipline, failure to promote, failure to grant tenure, or wrongful deprivation of career opportunity;
 - (C) allegations of misrepresentation or defamation made by an *Employee* which arise from an employment decision to hire, fire, promote or demote;
 - (D) allegations of infliction of emotional distress, mental injury, mental anguish, shock, sickness, disease or disability made by an *Employee* which arise from an employment decision to hire, fire, promote or demote;

- (E) allegations of false imprisonment, detention, or malicious prosecution made by an *Employee* which arise from an employment decision to hire, fire, promote or demote;
- (F) allegations of libel, slander, defamation of character, invasion of privacy made by an *Employee* which arise from an employment decision to hire, fire, promote or demote; and
- (G) other personal injury allegations made by an *Employee* which arise from an employment decision to hire, fire, promote or demote.

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

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

- 17. “Wrongful Employment Practice” means any actual or alleged *Wrongful Termination, Discrimination, Harassment, Retaliation, or Workplace Tort*.
- 18. “Wrongful Termination” means termination of an employment relationship in a manner which is alleged to have been committed in violation of law or because of any protected category or characteristic or in breach of an implied agreement to continue employment.

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

SECTION III - DEFENSE AND SETTLEMENT

The *Authority* shall have no duty to assume charge of investigation or defense of any *Claim*. However, the *Authority* shall have the right to assume the control of the negotiation, investigation, defense, appeal, or settlement of any *Claim* the *Authority* determines, in its sole discretion, to have reasonable probability of resulting in an *Ultimate Net Loss* in excess of the applicable *Retained Limit*. The *Covered Parties* shall fully cooperate in all matters pertaining to such *Claim* or proceeding. Such cooperation shall include, but not be limited to, executing all documents necessary to effectuate a settlement. If the *Covered Party's* lack of cooperation prevents settlement of the claim for a reasonable amount, defined as the amount the *Authority* is willing to pay and the claimant is willing to accept, and increases the potential liability for *Damages* and continued *Defense Costs*, the *Covered Party* shall pay or shall reimburse the *Authority* for those *Defense Costs* incurred after the claim could have been settled, and for any *Damages* awarded or settlement agreed upon in excess of the amount for which the claim could have been settled, or the *Authority* shall have the right to tender the claim back to the *Covered Party* and coverage shall cease.

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

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

SECTION IV - ERMA'S LIMIT OF COVERAGE

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

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

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

SECTION V - COVERAGE PERIOD AND TERRITORY

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

SECTION VI - EXCLUSIONS

This Memorandum does not cover:

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

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

2. **Compliance with ADA Requirements.** We do not cover any costs or expenses incurred to make premises accessible to persons with disabilities as required by:
 - (A) the Americans with Disabilities Act of 1990;
 - (B) any similar federal, state or local law;
 - (C) any amendments to such laws; or
 - (D) any regulations promulgated under any such laws.
3. **Contractual Liability.** We do not cover the liability of others assumed by the *Covered Party* in a contract or agreement. This does not apply to liability that the *Covered Party* would have had in the absence of the contract or agreement.
4. **ERISA, COBRA WARN Act, and FLSA Liability.** We do not cover any liability imposed on the *Covered Party* under:
 - (A) the Employee Retirement Income Security Act of 1974;
 - (B) the Comprehensive Omnibus Budget Reconciliation Act;
 - (C) the Worker Adjustment and Retraining Notification Act;
 - (D) the Fair Labor Standards Act, including but not limited to any wage and hour or other claim arising under the FLSA or any California Wage Orders or any similar federal or state law;
 - (E) any similar federal, state or local laws;
 - (F) any amendments to such laws; or
 - (G) any regulations promulgated under any such laws.
5. **Fines, Multiplied Damages, or Non-Monetary Relief.** We do not cover:
 - (A) fines, taxes, penalties, or liquidated Damages;
 - (B) the multiplied portion of any Damage award that is subject to a multiplier;
 - (C) non-monetary relief; or
 - (D) any 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, 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.

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 written *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) 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.

- (C) 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.

As to any claim for which the *Authority* has assumed control as set forth in SECTION III, above, and has so notified the *Covered Party*, 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 the *Authority* shall have the right to tender the claim back to the *Covered Party* and coverage shall cease.

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

2. Bankruptcy or Insolvency

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

3. Other Coverage

If 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 last 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* 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* within ninety (90) 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 ninety (90) day period commences from receipt of such new opinion or decision in which the *Covered Party* may appeal to the Board.

Any dispute concerning a decision by the Board shall be submitted to binding arbitration within ninety (90) days of written notification of the Board's decision. The *Covered Party* must exhaust all rights to appeal as established by the Bylaws 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 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 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 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. 7/1/2011, forms a part of Policy No. ERMA 2011-1EPL.

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

COVERED PARTY	RETENTION
City of Albany	\$25,000
Albany Municipal Services Joint Powers Authority (AMSJPA)	
City of Brisbane	\$50,000
City of Emeryville	\$50,000
Management of Emeryville Services Authority (MESA)	
Town of Fairfax	\$50,000
Twin Cities Police Authority	\$100,000
City of Larkspur	\$250,000
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
Town of San Anselmo	\$50,000
San Francisco Redevelopment Agency (SFRA)	\$50,000
City of Sausalito	\$50,000
Town of Tiburon	\$250,000
City of Union City	\$75,000

Central San Joaquin Valley Risk Management Authority

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 Delano Community Correctional Facility	\$25,000
City of Dos Palos	\$25,000
City of Escalon	\$25,000
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 Livingston	\$25,000
City of Los Banos	\$50,000
City of Madera	\$25,000
City of McFarland	\$25,000
City of Merced	\$100,000
City of Newman	\$25,000
City of Orange Cove	\$50,000
City of Parlier	\$50,000
City of Porterville	\$25,000
City of Reedley	\$25,000
City of San Joaquin	\$25,000
City of Selma	\$50,000
City of Shafter	\$25,000
City of Shafter Community Correctional Facility	\$25,000
City of Taft	\$25,000
City of Taft Community Correctional Facility	\$25,000
City of Wasco	\$50,000

Monterey Bay Area Self Insurance Authority

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

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	\$50,000
City of Pinole	\$50,000
City of Pittsburg	\$50,000
City of Pleasant Hill	\$50,000
City of San Pablo	\$100,000
City of San Ramon	\$50,000
City of Walnut Creek	\$50,000
West Contra Costa Transportation Advisory Committee (WCCTAC)	\$50,000

Public Agency Risk Sharing Authority of California

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

Public Entity Risk Management Authority

COVERED PARTY	RETENTION
City of Adelanto	\$250,000
City of Banning	\$25,000
City of Barstow	\$25,000
City of Canyon Lake	\$25,000
City of Cathedral City	\$25,000
City of Coachella	\$25,000
City of Desert Hot Springs	\$25,000
City of Hesperia	\$50,000
City of Holtville	\$25,000
City of La Mesa	\$25,000
City of Murrieta	\$250,000
Palm Springs Aerial Tramway	\$25,000
City of Perris	\$25,000
City of Stanton	\$25,000
City of Victorville	\$25,000

Small Cities Organized Risk Effort

COVERED PARTY	RETENTION
City of Colfax	\$25,000
City of Dorris	\$25,000
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 Yreka	\$25,000

Vector Control Joint Powers Agency

COVERED PARTY	RETENTION
Alameda County Mosquito Abatement District	\$100,000
Burney Basin Mosquito Abatement District	\$100,000
Butte County Mosquito and Vector Control District	\$100,000
Coachella Valley Mosquito and Vector Control District	\$100,000
Colusa Mosquito Abatement District	\$100,000
Compton Creek Mosquito Abatement District	\$100,000
Consolidated Mosquito Abatement District	\$100,000
Contra Costa Mosquito and Vector Control District	\$100,000
Delta Vector Control District	\$100,000
Durham Mosquito Abatement District	\$100,000
Fresno Mosquito and Vector Control District	\$100,000
Glenn County Mosquito and Vector Control District	\$100,000
Greater Los Angeles County Vector Control District	\$100,000
Kings Mosquito Abatement District	\$100,000
Lake County Vector Control District	\$100,000
Los Angeles County West Vector Control District	\$100,000
Marin-Sonoma Mosquito and Vector Control District	\$100,000
Mosquito and Vector Management District of Santa Barbara County	\$100,000
Napa County Mosquito Abatement District	\$100,000
Northwest Mosquito and Vector Control District	\$100,000
Orange County Vector Control District	\$100,000
Oroville Mosquito Abatement District	\$100,000
Placer Mosquito and Vector Control District	\$100,000
Sacramento-Yolo Mosquito and Vector Control District	\$100,000
San Gabriel Valley Mosquito and Vector Control District	\$100,000
San Joaquin County Mosquito and Vector Control District	\$100,000
San Mateo County Mosquito Abatement District	\$100,000
Shasta Mosquito and Vector Control District	\$100,000
Sutter-Yuba Mosquito and Vector Control District	\$100,000
Tehama County Mosquito and Vector Control District	\$100,000
Turlock Mosquito Abatement District	\$100,000
West Valley Mosquito and Vector Control District	\$100,000

Individual Entities

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

Effective Date: July 1, 2011

Endorsement No.: 1



AUTHORIZED REPRESENTATIVE

EMPLOYMENT RISK MANAGEMENT AUTHORITY

MEMORANDUM OF COVERAGE

ENDORSEMENT #2

This endorsement, effective 12:01 a.m. 7/1/2011, forms a part of Policy No. ERMA 2011-1EPL.

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,
Central San Joaquin Valley Risk Management Authority,
Employment Risk Management Authority,
Public Agency Risk Sharing Authority of California,
Public Entity Risk Management Authority,
Monterey Bay Area Self Insurance Authority,
Municipal Pooling Authority
Small Cities Organized Risk Effort, and
Vector Control Joint Powers Agency

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, 2011

Endorsement No.: 2


AUTHORIZED REPRESENTATIVE

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

This endorsement, effective 12:01 a.m. 7/1/2011, forms a part of Policy No. ERMA 2011-1EPL.

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

Small Cities Organized Risk Effort

COVERED PARTY	RETENTION
City of Colfax	\$25,000
City of Dorris	\$25,000
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 Rio Dell	\$25,000
City of Yreka	\$25,000

Effective Date: July 1, 2011

Endorsement No.: 3



AUTHORIZED REPRESENTATIVE