

**PUBLIC ENTITY
RISK MANAGEMENT AUTHORITY**



**MEMORANDUM OF
WORKERS' COMPENSATION AND
EMPLOYERS' LIABILITY COVERAGE**

**FOR THE PERIOD
JULY 1, 2022 TO JUNE 30, 2023**

EFFECTIVE: JULY 1, 2022

**PUBLIC ENTITY RISK MANAGEMENT AUTHORITY (PERMA)
MEMORANDUM OF WORKERS' COMPENSATION COVERAGE**

**DECLARATIONS
WCMOC-2022-23**

Coverage Provider

Public Entity Risk Management Authority ("PERMA") as now or may be hereafter constituted.

Members

As per the "Schedule of Covered Members"

PERMA Mailing Address

72811 Highway 111 #1014, Palm Desert, CA 92260

Coverage Period

July 1, 2022 to July 1, 2023, beginning and ending at 12:01 AM standard time.

Cancellation Notice:

Six (6) months written notice. Termination at end of coverage year only.

Workers' Compensation Coverage

Part One of the Memorandum of Coverage applies to the Member's obligations under the Workers' Compensation Laws of the States listed here: **California**

Employer's Liability Coverage

Part Two of the Memorandum of Coverage applies to the Member's obligations in each State listed above.

Other State Coverage

Part Three of the Memorandum of Coverage applies to the Member's obligations in all other states except those listed here: **None**

Limits of Liability

PERMA's Limit of Liability for each accident or each employee for disease under this Memorandum of Coverage shall not exceed \$500,000.

Excess Insurers' Limit of Liability

Workers' Compensation: Statutory

Employer's Liability: \$5,000,000

Retained Limit

The Member's Retained Limit for each accident or each employee for disease, is specified on Schedule of Covered Members, below.

SCHEDULE OF COVERED MEMBERS

The following are included members:

	Member	Member Retention
1	Banning	\$250,000
2	Barstow	\$250,000
3	Blythe	\$250,000
4	Canyon Lake	\$150,000
5	Cathedral City	\$250,000
6	Coachella	\$250,000
7	Colton	\$500,000
8	Desert Hot Springs	\$50,000
9	Hesperia	\$250,000
10	Holtville	\$250,000
11	La Mesa	\$250,000
12	Murrieta	\$250,000
13	Norco	\$250,000
14	Perris	\$250,000
15	Rancho Mirage	\$250,000
16	San Jacinto	\$100,000
17	SunLine Transit	\$250,000
18	Victorville	\$250,000
19	Westmorland	\$50,000

PUBLIC ENTITY RISK MANAGEMENT AUTHORITY

Workers' Compensation and Employer's Liability MEMORANDUM OF COVERAGE Program Year: 2022 – 2023

Effective July 1, 2022

INTRODUCTION

In return for the payment of premium and subject to all terms and conditions of this agreement, Public Entity Risk Management Authority (PERMA) agrees with the Member named in the Schedule of Covered Members as follows:

GENERAL SECTION

A. THE AGREEMENT

This agreement includes the Declarations and all Endorsements and Schedules attached to it and any relevant section of the JPA Agreement or Bylaws. It is a coverage agreement between PERMA and the Member. No condition, provision, agreement or understanding not stated in this coverage agreement (including the JPA Agreement and Bylaws) will affect any rights, duties or privileges in connection with this coverage agreement.

The terms of this agreement may not be changed or waived except by endorsement issued by PERMA to be part of the agreement. The Member is responsible for telling PERMA at once when the information contained in this agreement is no longer accurate for the Member's operations.

The coverage provided by PERMA is pooled self-insurance, and under no circumstances is it to be construed as any form of insurance.

B. WHO IS COVERED

The Member named in the Schedule of Covered Members Page is covered for liability to its employees, subject to the provisions of this agreement. The member represents that it is a duly qualified self insured entity under the Workers' Compensation Law of the State of California and will continue to maintain such qualification during the term that this Memorandum will be in effect. If the Member should fail to maintain such qualification, the amounts payable under this Memorandum will not exceed the amounts which would have been payable had such qualification been maintained in full force and effect.

C. WORKERS' COMPENSATION LAW

Workers' Compensation law means the Workers' Compensation Laws of the State of California (which include injury by both accident and disease). It includes any amendments to that law which are in effect during the coverage period. It does not include the provisions of any law that provides non-occupational disability benefits.

D. LOCATIONS

This agreement covers all of the Member's workplaces in California and in other states if listed unless the Member has other insurance, is self-insured or is covered under another Joint Powers Authority for such workplaces.

E. WHO IS ELIGIBLE FOR BENEFITS

The Member's employees (or, in the event of their death, their dependents) are eligible for benefits under this agreement, except that employees who are excluded under the Workers' Compensation law are not eligible for benefits under this agreement unless they have been included on the Declarations Page or by endorsement.

PART ONE: WORKERS' COMPENSATION COVERAGE

A. HOW THIS COVERAGE APPLIES

This Workers' Compensation Coverage applies to bodily injury by accident or bodily injury by disease, including resulting death, subject to the following conditions:

1. Bodily injury by accident must occur during the coverage period.
2. Bodily injury by disease must be caused or aggravated by the conditions of employment. The employee's exposure to those conditions causing or aggravating such bodily injury by disease must occur during the coverage period.

B. PERMA WILL PAY

PERMA will pay promptly when due to those eligible under this agreement the benefits required of the Member by the Workers' Compensation law, including related claims expenses, in excess of the Member Retained Limit specified in Schedule of Covered Members and subject to PERMA's Limit of Liability specified in the Declarations.

Claims expenses of the Member mean its litigation costs, interest as required by law on awards or judgments, reasonable expenses incurred at PERMA's request (but not loss of earnings), premiums for bonds to release attachments and for appeal bonds in bond amounts up to twice the amount payable under this coverage, litigation costs taxed against the Member, and a Member's special claim investigation or legal expenses which can be directly allocated to a specific claim, including medical bill review. Claim expenses exclude: salaries and travel expenses of employees of the Member, annual retainers, overhead and any fees paid to the Member's third-party administrator for claims administration services.

C. RIGHT TO ASSUME CONTROL OF DEFENSE

PERMA has no duty to investigate, handle, settle or defend any claims, suits or proceedings against the Member.

PERMA has the discretionary right, and shall be given the opportunity by the Member, to assume control of the defense, investigation, or settlement of any claim, suit or proceeding which appears to PERMA to involve a reasonable likelihood of resulting in a covered loss exceeding the Member's Retained Limit or to associate in the defense of such a claim. In either situation, the Member shall cooperate in all aspects of defense, investigation, or settlement, including payment of sums up to the Member's Retained Limit.

D. EXCLUSIONS

This Memorandum shall not apply to:

1. Punitive or Exemplary Damages, fines or penalties assessed against or imposed upon any Member; or any payments in excess of the benefits regularly required by the Workers' Compensation Law because of serious or willful misconduct of the Member, or because the Member failed to comply with any health or safety law or regulation.
2. Liability assumed by the Member under any contractual agreement, but this Exclusion does not apply to a warranty that work performed by or on behalf of the Member will be done in a workmanlike manner.
3. Defense or indemnification of any civil claim or civil lawsuit in any court brought by an employee against his/her employer.
4. Liability under the Merchant Marine Act of 1920, known as the Jones Act, 46 U.S. Code, Section 688; the U.S. Longshoremen and Harborworker's Act; the Outer Continental Shelf Act; the Defense Base Act; the Death on the High Seas Act; the Migrant and Seasonal Agricultural Worker Protection Act, or the Federal Employees Liability Act, to the extent such benefits

exceed the benefits that would have been paid to such injured employee under the Workers' Compensation Law of California.

5. Liability to any volunteer of the Member, unless the Member has assumed liability pursuant to California Labor Code sections 3363.5, et seq., by resolution before the date of the injury.
6. Any loss excluded by the provisions or exclusions described in the excess policy in effect at the time of the occurrence.
7. The Member's obligation to pay salary in lieu of temporary disability benefits as required by Labor code section 4850, except to the extent that the Member or the Authority would be obligated to pay temporary disability benefits if Labor Code section 4850 did not apply.
8. Bodily injury or occupational disease sustained by a peace officer, as defined in Section 50290 of the California Government Code, when he or she was off-duty, not acting under the immediate direction of his or her employer, and outside the state of California. However, this exclusion shall not apply to bodily injury or occupational disease sustained by a peace officer under such circumstances if:
 - i. the peace officer at the time of sustaining the injury or illness was engaging in the apprehension or attempted apprehension of law violators or suspected law violators, the protection or preservation of life or property, or the preservation of the peace; and
 - ii. prior to the occurrence, the governing board of the Covered Member has adopted a resolution, as provided for in California Labor Code Section 3600.2, subdivision (b)(4), accepting liability for such bodily injury and occupational illness under the Workers' Compensation Act.

E. OTHER INSURANCE

PERMA will not pay more than its share of benefits and costs covered by this agreement and other insurance, pooled self-insurance, reinsurance, indemnity, or reimbursement agreement applicable to the loss. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

F. LIMIT OF LIABILITY

PERMA's liability to pay for damages is limited. PERMA's Limit of Liability is shown in the Declarations. It is the most PERMA will pay for all amounts covered by this coverage because of bodily injury to one or more employees in any one accident or occurrence, or series of accidents or occurrences, arising out of any one event. PERMA will not pay any claims for damages after it has paid the limit of its liability under this coverage as explained above. Any amounts paid by PERMA over the Limit of Liability that are not reimbursed by an excess carrier shall be reimbursed by the Member.

The Limit of Liability is subject to the Member's Retained Limit. For example, if the Limit of Liability is \$500,000 and the Member's Retained Limit is \$200,000, PERMA would pay not more than \$300,000 in excess of the Member's Retained Limit.

G. PAYMENTS THE MEMBER MUST MAKE

The Member is responsible for any payments of benefits required under the Workers' Compensation law within the Retained Limit and those payments in excess of the benefits regularly provided by the Workers' Compensation law, including, but not limited to, those required because:

1. Of the Member's serious and willful misconduct;
2. The Member knowingly employed the employee in violation of law;
3. The Member's failure to comply with a health or safety law or regulation;
4. The Member's discharge, coercion or discrimination against any employee in violation of the law; or
5. Of injury to an employee under the minimum age specified in the Workers' Compensation law and illegally employed at the time of injury.

Any such payments are the sole responsibility of the Member and will not be counted in determining satisfaction of the Retained Limit.

H. RECOVERY FROM OTHERS

PERMA may enforce the Member's rights, and the rights of persons entitled to the benefits of this coverage, to recover PERMA's payments from anyone liable for the injury. The Member will do everything necessary to protect those rights for PERMA and to help PERMA enforce them, and will take no action to prejudice the rights of PERMA to seek such recoveries.

I. STATUTORY PROVISIONS

These statements apply where they are required by law:

1. As between an injured worker and PERMA, PERMA has notice of injury when the Member has notice.
2. PERMA is directly and primarily liable to any person entitled to the benefits payable by this coverage, subject to the provisions, conditions and limitations of this agreement.
3. Jurisdiction over the Member is jurisdiction over PERMA for purposes of the Workers' Compensation law. PERMA is bound by decisions against the Member under that law, subject to the provisions of this agreement that are not in conflict with that law.
4. Terms of this coverage that conflict with the Workers' Compensation law are changed by this statement to the extent necessary to conform to that law.
5. The Member's employee has a first lien upon any amount which becomes owing to the Member by PERMA on account of this agreement and in the case of the Member's legal incapacity or inability to receive the money and pay it to the claimant, PERMA will pay it directly to the claimant.

Nothing in these paragraphs relieves the Member of its duties under this agreement.

PART TWO: EMPLOYER'S LIABILITY COVERAGE

A. HOW THIS COVERAGE APPLIES

This Employer's Liability Coverage applies to bodily injury by accident or bodily injury by disease, including resulting death, subject to the following conditions:

1. The bodily injury must arise out of and in the course of the injured employee's employment by the Member.
2. The employment must be necessary or incidental to the Member's work in the State of California.
3. Bodily injury by accident must occur during the coverage period.
4. Bodily injury by disease must be caused or aggravated by the conditions of employment. The employee's last day of exposure to the conditions causing or aggravating such bodily injury by disease must occur during the coverage period.
5. If the Member is sued, the suit and any related legal actions for damages for bodily injury by accident or by disease must be brought under the laws of the State of California.

B. PERMA WILL PAY

PERMA will pay, up to the Limit of Liability specified in the Declarations, all sums over the amount stated as the Member's Retained Limit in Schedule of Covered Members that the Member legally must pay as damages because of bodily injury

to its employees, provided the bodily injury is covered by this Employer's Liability Coverage; such sums also include claim expenses, including a Member's litigation costs, interest as required by law on awards or judgments, reasonable expenses incurred at PERMA's request (but not loss of earnings), premiums for bonds to release attachments and for appeal bonds in bond amounts up to twice the amount payable under this coverage, litigation costs taxed against the Member, and a Member's special claim investigation or legal expenses which can be directly allocated to a specific claim, including medical bill review. Claim expenses exclude: salaries and travel expenses of employees of the Member, annual retainers, overhead and any fees paid to the Member's third-party administrator for claims administration services.

The damages PERMA will pay, where recovery is permitted by law, include damages:

1. For which the Member is liable to a third party by reason of a claim or suit against it by that third party to recover the damages claimed against such third party as a result of injury to the Member's employee;
2. For care and loss of services; and
3. For consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

Provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by the Members, and

4. Because of bodily injury to the Member's employee that arises out of and in the course of employment claimed against the Member in a capacity other than as employer.

C. EXCLUSIONS

This agreement does not cover:

1. Liability assumed under a contract. This exclusion does not apply to a warranty that the Member's work will be done in a workmanlike manner.
2. Punitive or exemplary damages.
3. Bodily injury to an employee while employed in violation of law with the Member's actual knowledge or the actual knowledge of any of the Member's executive officers.
4. Any obligation imposed by a Workers' Compensation, occupational disease, unemployment compensation or disability benefits law, or any

similar law, including any fines, penalties, or payments in excess of benefits regularly required by the Workers' Compensation Law because of serious or willful misconduct of the Member, or because the Member failed to comply with any health or safety law or regulation.

5. Bodily injury intentionally caused or aggravated by, or at the direction of, the Member.
6. Damages arising out of the discharge of, coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against, or termination of any employee, or any personnel practices, policies, acts or omissions.
7. Any non-employee claims, including claims from job applicants.
8. Liability under the Merchant Marine Act of 1920, known as the Jones Act, 46 U.S. Code, Section 688; the U.S. Longshoremen and Harborworker's Act; the Outer Continental Shelf Act; the Defense Base Act; the Death on the High Seas Act; the Migrant and Seasonal Agricultural Worker Protection Act, or the Federal Employees Liability Act.
9. Any liability covered by the Employment Risk Management Authority (ERMA).

D. RIGHT TO ASSUME CONTROL OF DEFENSE

PERMA has no duty to investigate, handle, settle or defend any claims, suits or proceedings against the Member.

PERMA has the discretionary right, and shall be given the opportunity by the Member, to assume control of the defense, investigation, or settlement of any claim, suit or proceeding which appears likely to involve indemnity by PERMA or to associate in the defense of such claim. In either situation, the Member shall cooperate in all aspects of defense, investigation, or settlement, including payment of sums up to the Member's Retained Limit.

E. OTHER INSURANCE

PERMA will not pay more than its share of damages and costs covered by this agreement and any other insurance, pooled self-insurance, reinsurance, indemnity, or reimbursement agreement applicable to the loss. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

F. LIMIT OF LIABILITY

PERMA's liability to pay for damages is limited. PERMA's Limit of Liability is shown in Declarations. It is the most PERMA will pay for all amounts covered by this coverage because of bodily injury to one or more employees in any one accident or occurrence, or series of accidents or occurrences, arising out of any one event. PERMA will not pay any claims for damages after it has paid the limit of its liability under this coverage as explained above. Any amounts paid by PERMA over the Limit of Liability that are not reimbursed by an excess carrier shall be reimbursed by the Member.

The Limit of Liability is subject to the Member's Retained Limit. For example, if the Limit of Liability is \$500,000 and the Member's Retained Limit is \$200,000, PERMA would pay not more than \$300,000 in excess of the Member's Retained Limit.

G. RECOVERY FROM OTHERS

PERMA may enforce the Member's rights to recover PERMA's payment from anyone liable for injury covered by this coverage. The Member Party will do everything necessary to protect those rights for PERMA and to help PERMA enforce them, and will take no action to prejudice the rights of PERMA to seek such recoveries.

H. ACTIONS AGAINST PERMA

There will be no right of action against PERMA under this coverage unless:

1. The Member has complied with all the terms of this agreement; and
2. The amount the Member owes has been determined with PERMA's consent or by actual trial and final judgment.

This coverage does not give anyone the right to add PERMA as a defendant in an action against the Member to determine the Member's liability.

PART THREE: COVERAGE OUTSIDE OF CALIFORNIA

This coverage is identical to Part One: Workers' Compensation Coverage of this agreement. It applies to the Member's employees who are hired in California and are eligible for benefits under this agreement while they are working anywhere outside California. This coverage only applies to employees who work on a temporary and transitory basis in another state, who are regularly employed in California, and whose work in the other state is incidental to their employment in California. For any workers' compensation benefits awarded under the law of any state or jurisdiction other than California, PERMA will indemnify the Member only to the extent that those benefits do not

exceed the benefits which would have been paid to such injured employee under the Workers' Compensation Law of the State of California.

PART FOUR: MEMBER'S DUTIES IF INJURY OCCURS

The Member or the Member's representative must tell PERMA at once if injury occurs that may be covered by this agreement. The Member's other duties are as follows:

1. Provide for immediate medical and other services required by the Workers' Compensation law.
2. Give PERMA or its representative the names and addresses of the injured persons and of witnesses, and other information PERMA may need.
3. Promptly give PERMA all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with PERMA and assist it, as PERMA may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with PERMA's right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses within PERMA's layer of coverage, except at the Member's own cost.

These are conditions precedent to the Member receiving coverage under this agreement.

PART FIVE: PREMIUM

A. DEPOSIT PREMIUM

All premium for this agreement will be determined by PERMA.

Remuneration is part of the premium basis. This premium basis includes payroll and all other remuneration paid or payable during the coverage period for the services of:

1. All the Member's employees eligible for benefits under this agreement while engaged in work covered by this agreement; and
2. All other persons engaged in work that could make PERMA liable under Part One (Workers' Compensation Coverage) of this agreement. If the Member does not have the payroll records for these persons, the contract

price for their services and materials may be used as the premium basis. This paragraph will not apply if the Member gives PERMA proof that the employers of these persons lawfully secured their Workers' Compensation obligations.

B. PREMIUM PAYMENTS

The Member will pay all premium when due.

C. FINAL PREMIUM

The deposit premium shown in PERMA's Budget and Annual Premium documents is an estimate. The final premium will be determined after this agreement ends by using the actual, not the estimated, premium basis and actual losses of the pool. If the final premium is more than the deposit premium the Member paid to PERMA, the Member must pay PERMA the balance. If it is less, PERMA will refund the balance to the Member.

D. RECORDS

The Member will keep records of information needed to compute premium. The Member will provide PERMA with copies of those records when requested.

E. AUDIT

The Member will let PERMA examine and audit all its records that relate to this agreement. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records and programs for storing and retrieving data. PERMA may conduct the audits during regular business hours during the coverage period and within three years after the coverage period ends. Information developed by audit may be used to determine final premium.

F. RATE CHANGES

This agreement is issued by PERMA and accepted by the Member with the agreement that the Member will accept any increase in premium or in the rates of premium which may be promulgated under any rating plan approved by the Board of Directors, and that the effective date of any such increase shall be the effective date thereof fixed in accordance with the provisions of any such rating plan approved by the Board of Directors. Also, the rates used to determine the premium are subject to increase during the term of the agreement if an increase in rates applicable to the agreements in force is approved by the Board of Directors, and the effective date of any such increase shall be the date fixed by the Board of Directors.

PART SIX: CONDITIONS

A. INSPECTION

PERMA has the right, but is not obligated, to inspect the Member's workplaces at any reasonable time. PERMA's inspections will relate to the workplaces and the premiums to be charged. PERMA may give the Member reports on the conditions PERMA finds. PERMA may also recommend changes. While they may help to reduce losses, PERMA does not undertake to perform the duty of any person to provide for the health and safety of the Member's employees or the public. PERMA does not warrant that the Member's workplaces are safe or healthful or that they comply with laws, regulations, codes or standards.

B. LONG-TERM POLICY

If this policy is written for a period of longer than one year, all the provisions of this agreement shall apply separately to each consecutive twelve-month period, or if the first or last period is less than twelve months, in the same manner as if a separate agreement had been written for each consecutive period. Until the coverage terminates, the Member's deposit premium will be transferred to each consecutive coverage period to act as a deposit in the same manner as if a separate agreement had been written.

C. TRANSFER OF MEMBER'S RIGHTS AND DUTIES

The Member's rights and/or duties under this agreement may not be transferred without PERMA's written consent.

D. PERMA'S NOTICE TO MEMBER

Mailing documents that relate to this agreement to the Member at the mailing address shown in the Declarations Page will be sufficient to prove notice to the Member of that document.

E. BANKRUPTCY OR INSOLVENCY

Bankruptcy or insolvency of the Member will not relieve PERMA of its duties or liabilities under this Memorandum. Payments will be made as if the Member had not become bankrupt or insolvent, but not for sums below the Retained Limit, nor in excess of the Limit of Liability.

F. CANCELLATION

PERMA may cancel this Memorandum in accordance with the procedures set forth in the Bylaws of the Group. The Member may cancel this Memorandum only by withdrawal from the Group or this program under the terms set forth in the Bylaws.

Notice of cancellation or withdrawal will be governed by the provisions of the Bylaws. Cancellation of withdrawal shall not relieve the Member of its obligations under the Agreement, Bylaws or Operating Plan, including the obligations to make premium contributions and to cooperate in the defense of claims covered under this agreement.

G. ARBITRATION

Decisions by PERMA as to whether coverage exists for a particular claim (or part of a claim) shall be made by the Board of Directors or by such employee or committee as the Board designates. A Member may appeal to the Board of Directors any such decision.

Any dispute concerning this Memorandum shall not be the subject of any court action, but shall instead be submitted to binding arbitration to determine whether PERMA abused its discretion and acted arbitrarily or capriciously. The Member must exhaust the right to appeal to the Board of Directors, if applicable, before requesting arbitration of a dispute.

Arbitration shall be conducted pursuant to Title IX of the California Code of Civil Procedure (commencing with Section 1280), except as otherwise provided herein. Arbitration shall be conducted by a three-person panel. The Member or Parties shall select a total of one arbitrator; PERMA shall select one arbitrator; and the two arbitrators shall then select a third arbitrator upon mutual agreement. No arbitrator shall be employed or affiliated with PERMA or any Member.

The procedures set forth in California Code of Civil Procedure Section 1283.05 relating to depositions and discovery shall apply.

The arbitration panel shall have jurisdiction to determine whether or not coverage applies. Under no circumstances shall the Authority be liable for consequential damages, "bad faith" damages, or any sums beyond the amounts due under Part One: Workers' Compensation, Part Two: Employer's Liability Coverage, and Part Three: Coverage Outside of California, plus interest at the same rate as the Authority earned on investments for the time period involved.

Each party shall bear the cost of its selected arbitrator and shall bear one-half the cost of the third arbitrator. Each party shall bear its own costs and expenses of arbitration, including attorney fees.

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