

To: Administration and Finance Committee

Date: May 1, 2017

From: Erick Cheung, Director of Finance

Reviewed by:

### SUBJECT: EMPLOYMENT PRACTICES LIABILITY INSURANCE

#### Background:

At the February Administrative and Finance (A&F) Committee, staff provided an introduction on the status of Employment Practices Liability (EPL) Insurance through CalTIP. EPL is a wrongful act that includes but not limited to harassment, discrimination (i.e. age, gender, race, etc.), and wrongful termination. The CalTIP Board decided in December of 2015 to stop covering EPL effective June 30, 2017. At that time, the Board agreed to move forward with receiving quotes from Employment Risk Management Authority (ERMA) and a group purchase commercial policy for EPL coverage.

In December 2016, the CalTIP Board proceeded to move forward to join ERMA, since the commercial policy option was not acceptable. Based on the decision by the CalTIP Board, County Connection staff submitted an application with ERMA and requested that Integro (County Connection Insurance Broker) request for quotes to provide the coverage.

To ensure there is no gap in coverage on July 1<sup>st</sup>, staff is requesting the A&F Committee make a recommendation for the Board to adopt at its next meeting in May. There will be representatives from ERMA and Integro to provide a brief overview and answer any questions the A&F Committee may have.

#### Summary:

The results of the quotes received from ERMA and Integro:

Provider	Coverage	Premiums based on Retention Levels		
		\$75,000	\$100,000	\$250,000
ERMA	\$1 million with excess insurance of \$1 million			\$45,923
Integro - Capitol Specialty Insurance Corp.	\$2 million		\$37,994	\$30,330
Integro - Arch/Lloyd's (*)	\$2 million		\$48,762	
ERMA	\$1 million			\$41,025
Integro - Capitol Specialty Insurance Corp.	\$1 million		\$26,869	\$21,450
Integro - Arch/Lloyd's (*)	\$1 million		\$36,120	
Integro - Euclid/Lloyd's (*)	\$1 million			\$39,938
Integro - Capitol Specialty Insurance Corp.	\$5 million		\$47,963	
Integro - Arch/Lloyd's (*)	\$5 million		\$66,822	

(\*) Both companies did not originally provide a quote but submitted an initial estimate. Staff would need to submit application for formal quote.

*ERMA*

ERMA is the first statewide risk sharing pool created exclusively to provide broad coverage for EPL with tailored loss prevention services (i.e. AB1825 and AB1234 training included). ERMA is comprised of nine JPA members and two individual members, totaling over 195 individual underlying members. One of the JPA members is the Municipal Pooling Authority (MPA) of Northern California, which represents most of County Connection’s Board except for the City of Concord and the County.

ERMA would require that we must maintain membership for three years before we could withdraw from the JPA. The coverage provided by ERMA is based on the claims incident date, which means they would cover claims that occurred on or after July 1, 2017. All claims would be handled by ERMA and their panel of attorneys. Hanson Bridgett is not currently a panel attorney, even though they do have known firms such as Liebert Cassidy Whitmore, Best Best & Kreiger, and Jackson Lewis. Hanson Bridgett could be a panel attorney but would need to go through the process and be available to all members. Also, they would need to agree to the hourly rates since ERMA will not authorize individual members to pay higher hourly rates. Finally, unlike an insurance company that could not renew you, it would require two-thirds of the ERMA Board or Executive Committee to remove a member.

*Integro - Capitol Specialty Insurance Corporation (CapSpecialty)*

CapSpecialty is a specialty insurance provider for small and mid-sized businesses across the U.S. and provides Employment Practices Liability for employer groups with up to 1,500 employees. Their best pricing fit in California is on organizations with 50-350 employees with annual revenues between \$10 million and \$250 million. The Insurer is rated A “Excellent” Financial Category Class VIII by AM Best. The coverage is based on a claims made and reported basis, which means that a covered event would be covered in the claims made policy that is in effect at the time the claim (or incident) is first made and reported to the insurance company (not by the policy that is in force at the time of the original occurrence). For instance, if a wrongful termination occurred during the first policy period (2017-18), but was not claimed against the organization and reported to the insurance company until the later 2018-19 renewal policy year, then the claim would be handled by the 2018-19 year renewal policy (not the 2017-18 policy). The event which leads to a claim must also have occurred after the “retro-date” stated on the policy (which in our case would be the July 1, 2017 start date). CapSpecialty has panel attorneys that include Jackson Lewis, but we have the option of using Hanson Bridgett as the attorney of record. Similar to our current structure with CalTIP, the insurance company will only include the panel rate costs as part of the retention amount (see rate table below). For example, CapSpecialty’s rate for a panel attorney is \$250 an hour, while Hanson Bridgett’s hourly rate is \$365 an hour. The difference of \$115 would be paid by County Connection, but not included in the retention amount. Finally, we would need to renew our insurance annually through Integro.

	Partner	Associate	Paralegal
Panel Rate	\$250	\$170	\$100
Hanson Bridgett Rate	\$365-\$345	\$325	\$225-\$200

*Other Insurance Companies*

During the initial request for quotes, only CapSpecialty submitted a proposal to Integro, other insurance companies declined due to the nature of not being familiar with transit agencies and/or our claims loss history (see table below). After Integro followed up with various insurance companies and explained the claims history, two additional quotes were received by Arch/Loyld & Euclid/Loyld. Both of the preliminary estimates are higher than CapSpecialty and we would need to go through the paperwork to finalize quotes.

CaTIP EPL Claims History - Incident Occurred			
Loss Paid:	0-3 years ago	4-6 years ago	7-9 years ago
\$0-\$10,000	-	-	1
\$10,000-\$50,000	-	-	-
\$50,000-\$100,000	-	-	1
\$100,000-\$150,000	-	-	-
\$150,000-\$200,000	1	-	-
\$200,000-\$300,000	-	-	1

**Next Steps:**

ERMA – ERMA’s Underwriting Committee has recommended County Connection for membership at the \$250,000 retention level. ERMA’s Board of Directors will approve membership at the May 16, 2017 meeting. County Connection will need to approve the Resolution Authorizing Participation in ERMA (Attachment A) at the next Board meeting to be a member. We would also need to provide written confirmation of our intent to bind coverage in ERMA or withdraw from the application process no later than June 1, 2017.

Integro - CapSpecialty – County Connection would need to determine retention amount and whether to use CapSpecialty’s panel attorneys or Hanson Bridgett as attorney of record. Finally, the Board would need to authorize staff to proceed with CapSpecialty and sign any necessary documentation.

**Recommendation:**

Staff is requesting the A&F Committee make a recommendation to the Board for Employment Practices Liability Insurance.

# Sample Resolution

## Authorizing Participation in ERMA

### (*Agency Name*)

#### RESOLUTION OF THE (*AGENCY NAME*) AUTHORIZING PARTICIPATION IN THE EMPLOYMENT RISK MANAGEMENT AUTHORITY

WHEREAS, the (*Agency Name*) wishes to obtain Employment Practices Liability coverage for the period (*date*); and

WHEREAS, the Employment Risk Management Authority (ERMA) is a self-insured joint powers authority created for the sole purpose of Employment Practices Liability Coverage. ERMA is comprised of various public entities who risk share up to \$1 million against potentially unlawful employment practices and discrimination claims; and

WHEREAS, ERMA formed primarily due to the fact that government entities have not historically been able to secure Employment Practices Liability (EPL) coverage at a competitive cost through the commercial insurance marketplace; and

WHEREAS, ERMA has met all of the high professional standards established by the California Association of Joint Powers Authorities (CAJPA) in the areas of governance, finance, claims control, safety and loss control and ERMA is fully accredited by CAJPA. CAJPA's accreditation process requires reviews by independent consultants in the areas of accounting, claims adjusting, and actuarial analysis; and

WHEREAS, ERMA provides services to both Joint Powers Insurance Authorities and individual public entities; and

WHEREAS, the (*Agency Name*) has determined that it is in the best interest to become a member of ERMA for the purpose of obtaining Employment Practices Liability coverage; and

WHEREAS, ERMA requires the (*Agency Name*) to pass a resolution expressing the desire and commitment of the (*Agency Name*)'s participation in ERMA, which requires a three year minimum participation period. (*Agency Name*) also understands our entity will be bound by the provisions in the ERMA Joint Powers

Agreement just as though it were fully set forth and incorporated herein whether our entity had signed it individually or through an underlying Joint Powers Insurance Authority.

**NOW, THEREFORE, BE IT RESOLVED BY THE (AGENCY NAME):**

THAT, the (Agency Name) approves participation in ERMA (date); and

THAT, the (Executive Director/or City Manager) on behalf of the (Agency Name) is hereby authorized to take any and all actions necessary to implement the foregoing resolution.

*I hereby certify that the foregoing resolution is a full, true and correct copy of a resolution passed by (Agency Name) on (date).*

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Secretary/Executive Director

ADOPTED: (date)

RESOLUTION NO. (#)