

**AMENDED AND RESTATED MEMORANDUM OF AGREEMENT
FOR RISK MANAGEMENT SERVICES
BY AND BETWEEN THE COUNTY OF VENTURA AND
THE VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION**

This amended and restated Memorandum of Agreement (AGREEMENT) hereby amends the Memorandum of Agreement by and between the County of Ventura ("COUNTY"), and the Ventura County Employees Retirement Association ("VCERA") entered into in or about September 2016 and is to be effective upon the adoption by both the Ventura County Board of Supervisors and the VCERA Board of Retirement.

WHEREAS, on January 25, 2016, the VCERA Board of Retirement adopted by resolution California Government Code section 31522.10, thereby allowing VCERA to appoint certain employees as employees of VCERA; and

WHEREAS, pursuant to California Government Code section 31522.10, the VCERA Board of Retirement may appoint certain personnel designated therein as employees of VCERA, subject to the terms and conditions of employment established by the Board of Retirement ("VCERA employees"); and

WHEREAS, the Board of Retirement is the governing body as to its personnel appointed pursuant to California Government Code section 31522.10 and the Board of Supervisors is the governing body for all other employees of the COUNTY assigned to work at VCERA; and

WHEREAS, VCERA desires to participate on its behalf and for the benefit of the VCERA employees in the COUNTY's Risk Management program, including but not limited to workers' compensation coverage and benefits afforded under the California Labor Code (e.g., reviewing/advising on work restrictions and conducting interactive process through the County's Human Resources department); and

WHEREAS, in the event VCERA is not covered under the COUNTY's insurance policies, the COUNTY and VCERA desire that COUNTY shall assist VCERA in the procurement of insurance.

NOW, therefore, the parties hereto agree as follows:

1. PURPOSE

The purpose of this AGREEMENT is to provide a means by which VCERA may contract with the COUNTY to participate in the COUNTY's Risk Management programs for the VCERA employees, to the same extent VCERA does as an agency of the County of Ventura and, where VCERA employees are not covered by COUNTY insurance policies, to provide a means by which the COUNTY shall assist VCERA in obtaining insurance policies on behalf of VCERA employees.

2. DURATION

As it relates to the VCERA employees only, this AGREEMENT will remain in effect from the date of execution by all parties until terminated by either party in writing, which is to be provided to the other party at least 365 days prior to the requested termination date. Notwithstanding the requested termination date, VCERA shall continue Risk Cost Allocation Plan contributions for VCERA employees to the Risk Management Internal Service Funds (ISF) for the remainder of the fiscal year within which termination becomes effective.

This AGREEMENT shall have no effect on coverage, contributions to the Risk Management ISFs or services provided to COUNTY employees assigned to work at VCERA. VCERA shall contribute to the Risk Management ISFs in the same manner and to the same extent as the COUNTY's agencies and departments, so long as and for each fiscal year that COUNTY employees are assigned to work at VCERA.

In the event of termination by either party, with respect to coverage afforded to VCERA employees, the COUNTY will remain responsible for adjusting and paying covered claims incurred during the operation of this AGREEMENT, unless other mutually agreeable arrangements are made.

3. SERVICES

- A. With respect to VCERA employees, VCERA may participate in COUNTY's self-insured Workers' Compensation Program, including the workers' compensation claim and benefit administration, safety and loss prevention consultations, and access to any safety training, to the same extent and at the same or comparable cost as COUNTY agencies and departments incur for the same or comparable services.
- B. VCERA agrees that it shall abide by all administrative policies and procedures and cooperate in the investigation necessary for the administration of COUNTY workers' compensation program in which VCERA is a participant for both VCERA employees and COUNTY employees assigned to work at VCERA.
- C. VCERA will be responsible for the payment and administration of any salary supplement or other contractual benefit related to industrial injuries and disability retirement, and this AGREEMENT is limited to administration and payment of benefits required by the California Labor Code for workers' compensation and the services the COUNTY currently provides in connection with applications filed under the CERL for disability retirement.

- D. Under this AGREEMENT workers' compensation coverage shall be provided for "VCERA employees" and members of the VCERA Board of Retirement.
- E. To the extent VCERA employees are not covered under the COUNTY's insurance policies, COUNTY will assist VCERA in procuring an insurance policy on behalf of VCERA employees, to cover general liability and property insurance and any other identified insurance coverages. VCERA will pay the premiums for any such insurance policy(ies) procured on its behalf as set forth in Section 4, below. COUNTY's Risk Management division will assist with broker meetings and in the application process. COUNTY's Risk Management division will assist in identifying risks and, unless VCERA requests otherwise, will continue to handle all claims and civil litigation as identified by those claims that are covered by insurance. County's Risk Management division will provide the insurance carrier with notice of claims for those claims covered by the insurance policy and will issue responsive correspondence to covered claims, and will timely provide copies of such communications to VCERA. Neither COUNTY nor COUNTY's Risk Management division shall be liable for any claims made on behalf of VCERA employees in excess of any procured policy limit.

4. COMPENSATION FOR SERVICES

- A. For workers' compensation insurance coverage, VCERA agrees to compensate the COUNTY at the rates charged by the COUNTY in the same manner as charges are made to COUNTY agencies and departments. Payment for the services provided to VCERA by COUNTY for the benefit of VCERA employees and COUNTY employees assigned to work at VCERA shall be in the same manner as charges to County agencies and departments, through payroll assessments each pay period for workers' compensation coverage and periodic billings for liability and insurance coverage. If VCERA disagrees with the proposed amount to be charged, VCERA will raise such disagreement during the budget development process. Any such disagreements not raised during the budget development process are waived. VCERA agrees to compensate COUNTY for services relating to the VCERA employees using the rate methodology used for County and non-COUNTY entities for the same or similar services.
- B. For all insurance policies other than workers' compensation, COUNTY agrees to assist VCERA in the procurement of insurance policies, including but not limited to general liability policies, employment liability policies, and cyber liability policies on behalf of VCERA employees. VCERA agrees that it will be wholly responsible

for the cost of any such insurance policies procured, including but not limited to the cost of premiums, any deductible, and any liability in excess of the policy limits and that COUNTY shall not be liable for any costs related to the procurement of the desired insurance policies or any liabilities arising under such policies. VCERA agrees that it will either be billed directly by the insurance carrier or will reimburse the COUNTY for any amounts paid by the COUNTY on VCERA's behalf; provided, however, that the COUNTY agrees that all amounts it previously charged VCERA for insurance coverage while VCERA was not listed as a separate insured on such policies will result in a credit to VCERA toward future premiums for such coverage until such credit is exhausted. VCERA agrees that, except for workers' compensation claims County shall not be liable, through insurance coverage or otherwise, for any claims asserted by VCERA employees that arose prior to the execution of this Amended and Restated Memorandum of Agreement.

- C. Costs/Liabilities associated with the research, development, and/or implementation of this AGREEMENT or any other extraordinary expense associated with or caused by the setup and/or administration of the terms of this AGREEMENT, including fees for consultants retained for the benefit of VCERA, VCERA employees or COUNTY employees working at VCERA will be charged to, and paid by, VCERA; provided, however, that an itemization of such costs/liabilities already incurred by the COUNTY must be provided to the VCERA Board prior to entering into this AGREEMENT and any future costs must be authorized by the VCERA Board prior to payment.

5. DELEGATION AND ASSIGNMENT

VCERA may not assign its rights or delegate its obligations hereunder, either in whole or in part, without prior written consent of the COUNTY.

6. CONFIDENTIALITY

Except as required to carry out the terms of this AGREEMENT, VCERA agrees to maintain the confidentiality of all COUNTY and COUNTY-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this AGREEMENT. COUNTY shall designate when a COUNTY or COUNTY-related record or information is private or confidential. All such records and information shall be considered confidential and shall be kept confidential by VCERA and VCERA's employees and agents, unless otherwise required by law. VCERA further agrees to maintain the confidentiality of any proprietary information identified as such by COUNTY and made available to it by COUNTY in the course of performing obligations under this AGREEMENT unless COUNTY agrees in writing to its release, or pursuant to court order.

Except as required to carry out the terms of this AGREEMENT, COUNTY agrees to maintain the confidentiality of all VCERA and VCERA-related records and information that relate to VCERA employees pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this AGREEMENT. VCERA shall designate when a VCERA or VCERA-related record or information is private or confidential, as it relates to VCERA employees. All such records and information shall be considered confidential and shall be kept confidential by COUNTY and COUNTY's employees and agents, unless otherwise required by law. COUNTY further agrees to maintain the confidentiality of any proprietary information identified as such by VCERA and made available to it by VCERA in the course of performing obligations under this AGREEMENT unless VCERA agrees in writing to its release, or pursuant to court order.

VCERA and COUNTY agree to comply with all applicable state and federal statutes and regulations regarding the confidentiality of medical information including the California Confidentiality of Medical Information Act (Civ. Code, § 56 et seq.) and the Health Insurance Portability and Accountability Act (Act Aug. 21, 1996, P.L. 104-191).

7. NO DEFENSE OR INDEMNITY

Nothing in this AGREEMENT shall be construed to constitute any agreement by the COUNTY to defend or indemnify VCERA or its employees, or for VCERA to defend or indemnify the County or its employees, for any claim arising under this agreement.

8. NOTICE

Where required to be given under this AGREEMENT, notice shall be in writing and deemed given when delivered personally or deposited in the United States mail, postage prepaid, certified, addressed as follows:

VCERA: Retirement Administrator
Ventura County Employees' Retirement Association
1190 S. Victoria Avenue, Suite 200
Ventura, California 93003

cc: VCERA Board Chair
Ventura County Employees' Retirement Association
1190 S. Victoria Avenue, Suite 200
Ventura, California 93003

COUNTY: Chief Executive Officer
County of Ventura
Hall of Administration
800 S. Victoria Avenue L#1940
Ventura, California 93009

cc: Risk Manager County of Ventura
Hall of Administration

800 S. Victoria Avenue
Ventura, California 93009

9. WAIVER OF DEFAULT OR BREACH

Waiver of any default shall not be considered a waiver of any subsequent default. Waiver of any breach of any provision of this AGREEMENT shall not be considered a waiver of any subsequent breach. Waiver of any default or breach shall not be considered a modification of the terms of this AGREEMENT.

10. AMENDMENT

Except as otherwise provided herein, the AGREEMENT may be modified or amended only in writing signed by authorized representatives of both parties.

11. SEVERABILITY

If any provision of this AGREEMENT, or any portion thereof, is found by a court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this AGREEMENT.

12. VENUE

The venue for any legal action filed by either party in state court to enforce any provision of this AGREEMENT shall be Ventura County, California.

13. ENTIRE AGREEMENT

This AGREEMENT constitutes the entire agreement between the parties relating to the specific subject of this AGREEMENT and supersedes all previous agreements, promises representations, understanding and negotiation, whether written or oral, among the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, this AGREEMENT was executed by the parties hereto as of the date last approved and made is effective as of July 12, 2022.

Ventura County Employees' Retirement
Association

County of Ventura

By _____
Mike Sedell, Chair
VCERA Board of Retirement

By _____
Chair Of The Board Of Supervisors

APPROVED AS TO FORM:
NOSSAMAN, LLP

APPROVED AS TO FORM:
Office of the County Counsel
County of Ventura

By _____
Ashley K. Dunning, Partner

By _____
Tiffany North, County Counsel

ATTEST:

DR. SEVET JOHNSON
Clerk of the Board of Supervisors,
County of Ventura, State of California

By: _____
Deputy Clerk of the Board