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MEMORANDUM

DATE: September 27, 2019 **CLIENT/MATTER:** 1913-01

TO: Susan Blankenburg, FAIRA General Manager

FROM: Dale E. Bacigalupi, FAIRA General Counsel

RE: Summary of changes to FAIRA JPA Agreement and Liability Risk Coverage Agreement Approved by the FAIRA Board on September 9, 2019

1. Changes to the FAIRA JPA Agreement(the updated agreement will be called the “Sixth Amended Joint Powers Agreement):
 - Deletes unnecessary language that applied to the year 1993 and the early days of FAIRA.
 - Add a definition of “Claims Administrator” and requires FAIRA members to notify the Claims Administrator when a new claim arises.
 - Clarifies the process for removal of a FAIRA Board member when the Board member’s sponsoring member District withdraws from FAIRA.
 - Makes other minor language adjustments to be consistent with revisions in the Liability Risk Coverage Agreement.

2. Changes to the Liability Risk Coverage Agreement:
 - The table of contents was deleted and replaced using Word's updatable table of contents feature.
 - Made numerous non-substantive revisions to make the agreement use more modern terminology used by public agency liability pools and to make it easier to understand by a non-lawyer.
 - Most of the articles and sections were rearranged to make the agreement flow in a more logical and consistent manner.
 - Revised all language limiting the type of coverage provided by FAIRA. For example, the definition of “Claim” was revised to more accurately reflect that a claim is a demand for coverage by a covered party rather than a demand by a third party against

an insured. The original definition did not capture the possibility of a demand by a covered party for first party loss, it only addressed third party losses.

- Removed all references to SIR dollar amounts.
- Removed all references to 1993 dates.
- Definition of “Participant” was changed to “Participating Member Agency.” This is to help clarify that all of the agencies who are parties to this agreement are FAIRA member agencies.
- Definition for “Adjustment Proportion” was removed as this definition was never used in the original version of the agreement.
- Removed language in recitals that was unnecessary since it was already included in the Joint Powers Agreement.
- Added definition for Joint Powers Agreement and added references to the JPA where appropriate in the text of the agreement.
- Added definition for “Memorandum of Coverage” and references the same where appropriate in the text of the agreement.
- Merged administrative, risk, and excess premiums into one single definition for “Premium.”
- The premium calculation was simplified – see new section 5.4.
- Removed the deductible premium and language regarding prepayment of deductibles.
- Changed the interest rate on overdue payment from 12% to 5%.
- Removed Exhibits A–F. Removed references to former Exhibits A–F. Former Exhibit G “List of Participants” is now Exhibit A. New section 11.2(b) indicates that Exhibit A is to be revised at least annually by the GM to reflect the list of participating member agencies for each coverage period.
- Removed Schedule B (it was blank anyway). Removed references to Schedule B.
- Changed termination provision. Agreement now terminates only upon the circumstances set forth in the new section 4.1
- Changed Schedule B to Exhibit B. New Section 11.2(b) indicates Exhibit B may be amended by majority of the Governing Board.
- Clarified language as to when withdrawal from the agreement becomes effective. Now states that withdrawal is “effective on the last day of the Coverage Period which first commenced within the twelve (12) month period following the request to withdrawal.” See new section 8.2(a). This is not a substantive change but this new language makes the intent more clear.
- Added section 5.5(c) to clarify that there are no premium adjustments with respect to excess insurance or reinsurance *unless FAIRA is required to pay all or a portion of a covered claim that excess insurance or reinsurance refuses to pay.* This does not change the substance of the original agreement as this language was previously buried in the second paragraph former section 3.5.