



MEMORANDUM

Date: 11/15/19

To: Board Directors

Attn: Mike Del Puppo
President

From: Fire District Staff

Subject: Resolution 2019-08 Fire Agencies Insurance Risk Authority Updated Joint Powers and Liability Risk Sharing Agreements

BOARD OF DIRECTOR'S BRIEFING PAPER

ISSUE:

Staff is asking for the Board of Directors to review and accept the Fire Agencies Insurance Risk Authority (FAIRA) updated Joint Powers and Liability Risk Sharing Agreements by Resolution 2019-08.

BACKGROUND:

FAIRA is the District's Liability insurance provider. FAIRA recently updated their Joint Powers Agreement and Liability Risk Sharing Agreement.

DISCUSSION:

As a member of the FAIRA Joint Powers Authority, the District must review and accept the update to the Joint Powers and Liability Risk Sharing Agreements.

ALTERNATIVES:

The only alternative is to find a different Insurance provider for the District.

IMPACTS (Consider potential consequences related to each of the following areas of concern for proposed alternatives):

- Fiscal -
- Operational -
- Legal – The District is required to maintain liability insurance.
- Labor -
- Sociopolitical -
- Policy -
- Health and safety -
- Environmental -
- Interagency -

RECOMMENDATION:

Staff is recommending that the Board of Directors approves to accept the updated Fire Agencies Insurance Risk Authority (FAIRA) Joint Powers and Liability Risk Sharing Agreements by Resolution 2019-08. That any Board of Director makes a motion to adopt Resolution # 2019 - 08 and accept the updated Fire Agencies Insurance Risk Authority (FAIRA) Joint Powers and Liability Risk Sharing Agreements.

APPROVED:



Josh I. Chrisman, Assistant Chief

11/15/2019



Lozano Smith

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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.

SIXTH AMENDED JOINT POWERS AGREEMENT
of the
FIRE AGENCIES INSURANCE RISK AUTHORITY
PARTICIPANTS LISTED IN EXHIBIT "1" HERETO

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**JOINT POWERS AGREEMENT
CREATING THE FIRE AGENCIES INSURANCE RISK AUTHORITY**

This JOINT EXERCISE OF POWERS AGREEMENT (“Agreement”) among those local agencies signatory to this Agreement is for the purpose of establishing, operating and maintaining self-insurance programs for the purpose of general liability insurance, including coverage for motor vehicle liability and such other forms of insurance as may be agreed upon by the Authority. The Agreement has been amended several times since FAIRA was established. The current Agreement, entitled the Sixth Amended Joint Powers Agreement,” was approved by action of a majority of the Members, as required by Article 27 of the Agreement. The consent of a majority of the membership of the Authority, acting through their legislative bodies, and in compliance with all applicable requirements of the Joint Powers Law, was received on _____, 2019. The “Sixth Amended Joint Powers Agreement,” supersedes all previous agreements entered into by the Authority Member local agencies. It is dated June 17, 2019. The Agreement is effective as to individual Authority member local agencies when it is executed consistent with Agreement Article 5.

RECITALS

This Agreement is predicated upon the following facts:

1. WHEREAS, the Member Agencies are public agencies organized and operating under the laws of the State of California.

2. WHEREAS, the following state laws, among others, authorize the Member Local Agencies to enter into this Agreement:

(a) Health and Safety Code Section 13861(j), permitting a Fire Protection District to enter into joint powers agreements;

(b) Health and Safety Code Section 13861(k), permitting a Fire Protection District to provide insurance;

(c) California Water Code Section 71680(a), permitting a water district to exercise any of the powers functions and duties which are vested in a Fire Protection District;

(d) Government Code Sections 989 and 990, permitting local public entities to insure itself against liability and other losses;

(e) Government Code Section 990.4, permitting a local public entity to provide insurance and self-insurance in any desired combination;

(f) Government Code Section 990.8, permitting two or more local public entities to enter into an agreement to jointly fund such expenditures under the authority of Government Code Sections 6500 - 6515;

(g) Government Code Sections 6500 - 6515, permitting two or more local public entities to jointly exercise under an agreement any power which is common to each of them; and,

(h) Article XVI, Section 6 of the California Constitution, which provides that insurance pooling arrangements under joint exercise of power agreements shall not be considered in giving or lending of credit as prohibited therein.

3. WHEREAS, each of the parties to this Agreement desires to join together with other parties for the purposes of (a) developing an effective risk management program to reduce the amount and frequency of their losses; (b) pooling their self-insured losses; and, (c) jointly purchasing excess insurance and administrative services in connection with a joint protection program for said parties; and,

4. WHEREAS, it has been determined that it is economically feasible and practical for the parties to this Agreement to do so;

NOW, THEREFORE, for and in consideration of all the mutual benefits, covenants, and agreements contained herein, the parties hereto agree as follows:

ARTICLE 1. PURPOSE

This Agreement is entered into by Member Agencies pursuant to the provisions of California Government Code Sections 990, 990.4, 990.8, and 6500 et seq. in order to develop an effective risk management program: (a) to reduce the amount and frequency of their losses; (b) pooling their self-insured losses; and, (c) jointly purchase excess insurance and administrative services in connection with a joint protection program for said parties. These purposes, among other things, shall be accomplished through the exercise of the powers of Member Agencies jointly in the creation of a separate entity, to be known as the Fire Agencies Insurance Risk Authority ("FAIRA"), to administer a joint protection program wherein Member Agencies will pool their losses and claims, jointly purchase excess insurance and administrative and other services, including claims adjusting, data processing, risk management, loss prevention, legal and related services.

It is also the purpose of this Agreement to provide for the removal of participating agencies for cause, or upon request.

ARTICLE 2. DEFINITIONS

Unless the context otherwise requires;

(a) "Authority" means the Fire Agencies Insurance Risk Authority ("FAIRA") created by this Agreement;

(b) "Board" is the governing board of the Authority, the composition of which is defined by Agreement Article 7(a);

(c) "Executive Board" means the President, Vice President, Secretary, Treasurer and one other Board member;

(d) "Insurance Program" means a program of providing insurance administered by the Authority for Member Agencies, implemented by this Agreement and by an insurance program agreement by and among the Authority and such Member Agencies;

(e) "Insurance Program Agreement" or "Liability Risk Coverage Agreement" means an insurance program agreement by and among the Authority and Members providing for implementation of an Insurance Program;

(f) "Joint Powers Law" means Articles 1 through 4, Chapter 5, Division 7, title 1 (commencing with Section 6500) of the Government Code;

(g) "Liability Risk Coverage Agreement" means that certain insurance program

agreement among the Member Agencies and the Authority, dated as of _____, 2019, as it is updated or replaced from time to time by the Board;

(h) “Member Agency” means any of the public agencies which are a party to this Agreement and a member of the Authority; and,

(i) “Treasurer” is the officer of the Authority selected by the Board to manage, administer and invest moneys in accordance with this Agreement. The Treasurer shall be the Financial Officer of the Authority.

(j) “Claims Administrator” is the agency appointed by the Authority to investigate all claims and determine the extent of the pools liability.

ARTICLE 3. PARTIES TO THE AGREEMENT

Each party to this Agreement certifies that it intends to, and does, contract with all other parties who are signatories of this Agreement and, in addition, with such other parties as may later be added as parties to, and signatories of, this Agreement pursuant to Article 23. Each party to this Agreement also certifies that the withdrawal of any party from this Agreement, pursuant to Article 21, shall not affect this Agreement nor the remaining parties’ intent to contract as described above with the other parties to the Agreement then remaining.

ARTICLE 4. CREATION OF AUTHORITY

Pursuant to the Joint Powers Law, it is hereby reaffirmed that the Authority is created as a public entity, separate and apart from the parties to this Agreement.

ARTICLE 5. TERM OF AGREEMENT

This Agreement is effective as against each Member Agency as of the date such Member Agency executes this Agreement and continues until terminated as hereinafter provided.

ARTICLE 6. POWERS OF AUTHORITY

The Authority is authorized, in its own name, to do all acts necessary for the exercise of those powers referred to in Recital 2 including, but not limited to, each of the following:

(a) make and enter into contracts, including but not limited to the Liability Risk Coverage Agreement;

(b) incur debts, liabilities and obligations and to encumber real or personal property; but no debt, liability or obligation of the Authority is a debt, liability or obligation of any Member Agency which is a party to this Agreement, except as otherwise provided by Articles 21 and 22;

(c) acquire, hold or dispose of real and personal property;

(d) receive, hold and dispose of contributions and donations of property, funds, services and other forms of assistance from any source;

(e) sue and be sued in its own name, and settle any claim against it;

(f) employ agents and employees;

(g) acquire, construct, manage and maintain buildings;

(h) lease real or personal property including that of a Member Agency;

(i) receive, collect, invest and disburse moneys;

(j) receive and use contributions and advances from Members as provided in California Government Code Section 6504, including contributions or advances of personnel, equipment or property;

(k) invest any money in its treasury that is not required for its immediate necessities, pursuant to California Government Code Section 6509.5;

(l) develop and implement insurance risk management programs, including pooling of self-insurance losses, purchase of excess insurance and reinsurance and paying related administrative expenses; and,

(m) exercise other reasonable and necessary powers in furtherance or support of any purpose of the Authority or power granted by the Joint Powers Law, this Agreement or the Bylaws of the Authority.

These powers shall be exercised in the manner provided by law and in accordance with the requirements of the Executive Board where specifically designated in this Agreement, and except as expressly set forth in this Agreement, subject only to those restrictions upon the manner of exercising the powers which are imposed upon local public agencies in the exercise of similar powers.

ARTICLE 7. GOVERNING BOARD

(a) Composition of Board.

Beginning as of the Board meeting held on or after June, 2005, the Authority shall be governed by a Board composed of thirteen (13) members. Of the 13 seats on the Board, one shall be reserved for one of the Member Agencies located in the state of Nevada, and one shall be reserved for the largest FAIRA Member Agency (as determined by premium paid in the last fiscal year). Thereafter, every four (4) years or as otherwise determined by the Board of Directors to be election years, the FAIRA Manager shall invite nominations from all of the Member Agencies to fill the remaining eleven seats on the Board. Thereafter, the Manager

shall compile a list of Board nominations and shall submit the list of nominations to all of the Member Agencies for a vote. Only the Member Agencies located in the state of Nevada shall vote to select the Member Agency to fill the seat reserved for the Nevada Member Agencies. At the FAIRA Board meeting convened in June of an election year, the Board of Directors shall review and count the ballots and shall determine, based on the balloting, the Agencies who shall be represented on the Board of Directors for the upcoming 4-year period. The Board may establish written procedures for the conduct of nominations, balloting and Board Member selection as needed. Board members shall be elected for a term of four (4) years. Each Member Agency represented on the Board shall be either a member of the legislative body, its administrative officer, or its fire chief or staff person responsible for its risk management function as its representative to the Board. Each Member Agency legislative body shall also appoint one alternate as a Board member, who shall have the same qualifications as the Member Agency Board member, and who may attend, participate in, and vote at any meeting of the Board at which the regular Board member is absent. A Board member is not entitled to compensation from the Authority. However, the Board may authorize reimbursement for expenses, consistent with its Board of Directors Policy, incurred by a member in connection with the duties of a Board member.

(b) Vacancy on Board.

Any vacancy in a Board member or alternative Board member position shall be filled by the Member Agency's legislative body for the remaining term of the Board member or alternative Board member position.

Any vacancy created on the Board by the departure or withdrawal of any member agency shall be filled by appointment by the Board. The newly appointed Board member shall serve for the unexpired term of the Board position that became vacant as a result of the departure or withdrawal. The appointment may be made at any, regular or special meeting of the Board.

During the interim between the vacancy and the date of the next general meeting, the appointment of an interim Board member may be made by the consent of the majority of the Board if the remaining Board feels a replacement is necessary for the proper continued conduct of Board business. However, if the number of Board members drops to less than seven (7) for more than three (3) months prior to the next general meeting, the Board must appoint an interim Board member.

The number of Board members may increase temporarily by vote at the general meeting if such an increase is being made in anticipation of the withdrawal of a member(s) of the Board prior to the next general meeting; the appointment would be subject to the final withdrawal of the member.

(c) Removal from Board.

A Board member and/or alternate Board member shall be removed from the Board upon the occurrence of any one of the following, as appropriate, events:

(1) Receipt by the Authority of written notice from the appointing Member Agency of the removal of the Board member or alternate Board member, together with a certified copy of the resolution of the legislative body of the Member Agency effecting such removal;

(2) Receipt by the Authority of written notice of the withdrawal of the Member Agency from this Agreement;

(3) The death or resignation of the Board member or alternate Board member;
and,

(4) Receipt by the Authority of written notice from the Member Agency that the Board member or alternate Board member is no longer qualified as provided in section (a) of this Article.

(d) Powers of Board.

The Board shall have the following powers.

(1) Except as otherwise provided in this Agreement, the Board shall exercise all powers and conduct all business of the Authority, either directly or by delegation to other bodies or persons.

(2) The Board shall form an Executive Board, as provided in Article 10. The Board may delegate to the Executive board, and the Executive Board may discharge, any powers or duties of the Board except adoption of the Authority's annual budget. Any powers and duties so delegated shall be specified in a resolution adopted by the Board.

(3) The Board may form, as provided in Article 11, such other committees as it deems appropriate to conduct the business of the Authority, or it may delegate such power to the Executive Board in the Bylaws or by resolution of the Board. The membership of any such other committee may consist in whole or in part of persons who are not members of the Board; provided that the Board and the Executive Board may delegate decision-making powers and duties only to a committee a majority of the members of which are Board members. Any committee a majority of the members of which are Board members may function only in an advisory capacity.

(4) The Board shall elect the officers of the Authority and shall appoint or employ necessary staff in accordance with Articles 9 and 12, respectively.

(5) The Board shall cause to be prepared, and shall review, modify as necessary, and adopt the annual operating budget of the Authority. Adoption of the budget may not be delegated.

(6) The Board, by and through its Executive Board, shall receive, review and act upon periodic reports and audits of the funds of the Authority, as required under

Articles 17 and 18 of this Agreement.

(7) The Board shall have such other powers and duties as are reasonably necessary to carry out the purpose of the Authority.

ARTICLE 8. BOARD MEETINGS AND VOTING

(a) Regular and Special Meetings.

The Board shall hold at least one (1) regular meeting each year. The Board shall fix the date, hour and place for each regular meeting. The President or General Manager may request special meetings as necessary. Special meetings may also be called upon written request by at least one-third (1/3) of the Board members. Notice of such special meetings shall be delivered personally or by mail to each Board member at least twenty-four (24) hours before the time of such meeting.

(b) Ralph M. Brown Act.

Each meeting of the Board, including without limitation regular, adjourned regular, and special meetings shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act, Section 54950 et seq. of the Government Code.

(c) Minutes.

The Authority Board shall keep minutes of regular, adjourned regular, and special meetings kept by the Secretary. As soon as practicable after each meeting, the Secretary shall forward to each Board member a copy of the minutes of such meeting.

(d) Quorum.

A majority of the members of the Board is a quorum for the transaction of business. A vote of the majority of a quorum at a meeting is sufficient to take action.

(e) Voting.

Each member of the Board shall have one (1) vote.

ARTICLE 9. SELECTION OF OFFICERS AND CONSULTANTS

(a) Officer Selection: Vacancies.

Except as may be otherwise provided in the Bylaws of the Authority, the Board shall elect a new President and Vice President in the last meeting of each fiscal year. The Board may appoint such other officers as it considers necessary. Each officer shall assume the duties of his office upon election or appointment. The President shall preside at and conduct all meetings of the Board. In the absence or inability of the President to act, the Vice

President shall act as President. If either the President or Vice President ceases to be a member of the Board, the resulting vacancy shall be filled at the next regular meeting of the board held after the vacancy occurs or at a special meeting of the Board called to fill such vacancy.

(b) Qualification of Treasurer.

Pursuant to Government Code section 6505.5, the Treasurer shall be the treasurer of the legislative body of one of the Member Agencies of the Authority or the county treasurer in which one of the Member Agencies is situated, or, pursuant to Government Code Section 6505.6, the Board may appoint one of its officers or employees to the position of Treasurer, who shall comply with the requirements set forth for such office in the Joint Powers Law. Should the Joint Powers Law be amended to permit the selection of the Treasurer from another class of persons, the Treasurer may be selected from such class.

ARTICLE 10. EXECUTIVE BOARD

The Board shall establish an Executive board which shall consist solely of members selected from the membership of the Board. The terms of office of the members of the Executive Board shall be provided in the Bylaws of the Authority. [The Executive](#)

[The Executive](#) Board shall conduct the business of the Authority between meetings of the Board, exercising all those powers as provided for in section (d)(2) of Article 7, or as otherwise delegated to it by the Board.

ARTICLE 11. COMMITTEES

The Board may establish committees as it deems appropriate to conduct the business of the Authority or it may, in the Bylaws or by resolution, delegate such power to the Executive Board. Members of Committees shall be appointed by the Board or the Executive board, as the case may be. Each Committee shall have those duties as determined by the Board or the Executive board, as the case may be, or as otherwise set forth in the Bylaws. Each Committee shall meet on the call of its chairperson, and shall report to the Executive Board and the Board as directed by the Board or the Executive Board, as the case may be.

ARTICLE 12. STAFF

The Board or Executive Board shall provide for the appointment of such other staff as may be necessary for the administration of the Authority. Members of the staff or employees of the Authority shall be compensated in such manner as shall be approved by the Board as permitted by applicable law.

ARTICLE 13. FISCAL YEAR

The "fiscal year" of the Authority is the period from the first day of July of each year to and including the last day of June of the following year. The first full fiscal year for the

reaffirmed Authority shall be the period of time from July 1, 1995 through June 30, 1996.

ARTICLE 14. ESTABLISHMENT AND ADMINISTRATION OF FUNDS

(a) The Authority, through its Treasurer, shall establish the following funds:

(1) A Central Loss Fund, which shall be used only for the purpose of paying the covered losses and related settlement costs (including claims adjusting and legal defense fees) for which the Authority is self-insured and of establishing a reserve to cover probable future payments for claims and suits not settled; and,

(2) An Operating Fund for the purpose of paying excess insurance premiums, brokers' fees, consultant fees, legal fees (not including claims, legal defense costs), employee salaries, claims administration fees and such other operating expenses as the Board directs.

The Authority through its Treasurer, may establish such other funds as the Board considers necessary.

(b) All Authority funds shall be deposited in one or more of the following:

(1) The treasury of the Member Agency from which the Treasurer of the Authority is selected;

(2) A bank, or savings and loan association, selected by the Board; or,

(3) The treasury of the State of California.

The Treasurer shall invest and reinvest the funds in compliance with Government Code Section 53601 or any other provision of law governing the investment of public agency moneys, as may be enacted and become effective from time-to-time. All interest received on the Authority's invested funds shall be credited to the respective fund of the Authority from which the investment was made.

(c) The Treasurer shall authorize the drawing of warrants on funds only in accordance with procedures established by the Board. The Board may delegate the Authority to draw warrants against the Central Loss Fund to a claims committee comprised of two (2) Board members, and the management consultant or claims adjuster to draw a warrant for a claim settlement for an amount of not more than \$5,000. The Board may increase or reduce this authority by fixing a larger or lesser maximum amount. The Board may delegate the Authority to draw warrants on the Operating Fund and on such other funds as it creates.

ARTICLE 15. BUDGET

The Authority shall adopt an annual budget, in accordance with Article 7 hereof, not later than the first day of its fiscal year. For the first full fiscal year, the reaffirmed Authority shall

adopt a budget not later than June 15, 1995.

ARTICLE 16. ASSESSMENT OF FEES

The Authority, through its Executive Committee, may establish such fees for costs of administration of the Authority as it deems necessary.

ARTICLE 17. ACCOUNTS, RECORDS AND AUDITS

(a) Accounts and Records.

The Treasurer shall establish and maintain the funds and accounts in accordance with acceptable accounting practices and shall maintain such other records as the Executive Board requires. Books and records of the Authority in the possession of the Treasurer shall be open to inspection at all reasonable times by designated representatives of the Member Agencies. Within ninety (90) days after the close of each fiscal year, the Treasurer shall give a complete written report of all financial activities for that fiscal year to each Member Agency. The Authority shall adhere to the standard of strict accountability for funds set forth in the Joint Powers Law.

(b) Audits.

The Executive Board shall contract with a certified public accountant to make an annual audit of the accounts and records of the Authority at the end of each fiscal year. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Government Code Section 26909 and shall conform to generally accepted auditing standards. When an audit is completed, the Authority shall have a copy of the audit report filed as a public record with each Member Agency. The audit report shall be filed within six (6) months after the end of the fiscal year under examination. The Authority shall bear the costs of the audit, which costs are a charge against the operating funds of the Authority.

ARTICLE 18. RESPONSIBILITY FOR MONEYS AND PROPERTY

The Treasurer of the Authority shall have the custody of and shall disburse Authority funds as directed by the Executive Board; as provided in the Liability Risk Coverage Agreement, as provided by accounting procedures developed in accordance with this Agreement, and as nearly as possible in accordance with generally accepted accounting principles.

ARTICLE 19. MEMBER AGENCY RESPONSIBILITIES

Each Member Agency has the following responsibilities:

(a) Appoint, if applicable, its alternate to the Authority Board and remove such alternate, if necessary, as provided in Article 7 hereof;

(b) Appoint an employee to be responsible for the risk management function within the Member Agency and to serve as a liaison between the Member Agency and the Authority regarding risk management matters;

(c) Adopt a risk management statement;

(d) Adopt and implement a risk management program and other Agency training and instructional programs which can reasonably be expected to reduce, or minimize, the Member Agency's losses;

(e) Establish and maintain an active safety committee;

(f) Promptly notify the Claims Administrator of the existence of all claims.

(g) Cooperate fully with the Authority in determining the cause of losses and in the settlement of claims;

(h) Pay its premiums, and administrative costs and fees, and any adjustments thereto, promptly to the Authority when due. After withdrawal or termination, such agency shall pay promptly to the Authority its share of any additional premium and withdrawal penalty, when and if required of it by the Board under Article 21 or 22 of this Agreement;

(i) Cooperate with and assist the Authority and any insurer, claims adjuster or legal counsel of the Authority in all matters relating to this Agreement, the Liability Risk Coverage Agreement and covered losses, and comply with all bylaws, policies, rules and regulations adopted by the Board;

(j) Consider proposed amendments to this Agreement as set forth in Article 27 hereof; and,

(k) Provide the Authority with such other information or assistance as may be necessary for the Authority to carry out the joint protection program under this Agreement.

ARTICLE 20. CANCELLATION

The Authority shall have the right to cancel any Member Agency's membership in the Authority upon a majority vote of the Governing Board. Any Member Agency so canceled shall, on the effective date of the cancellation, be treated the same as if the Member Agency had voluntarily withdrawn from this Agreement.

ARTICLE 21. WITHDRAWAL

(a) A Member may withdraw from membership in the Authority upon advance written notice delivered to the Authority no later than twelve (12) months prior to the end of a Coverage Period; provided that the Liability Risk Coverage Agreement or another Insurance Program Agreement may set forth additional conditions to withdrawal. A Member

which no longer participates in any Insurance Program of the Authority, by reason of expulsion from an Insurance Program or otherwise, shall be deemed to have withdrawn from this Agreement and shall no longer be a party to this agreement. No withdrawal, however, shall relieve such Member from its obligations under any outstanding agreements except in accordance with such agreements.

(b) A Member Agency which withdraws or is expelled as a party to this Agreement must pay to the Authority, upon withdrawal or expulsion, the equivalent of ten percent (10%) of its annual Participation Premium payment.

(c) A Member Agency which withdraws as a party to this Agreement shall not be reconsidered for new membership until the expiration of one year from the effective date of the Member Agency's withdrawal.

(d) The withdrawal of any Member Agency from this Agreement shall not terminate this Agreement, and no Member Agency, by withdrawing, shall be entitled to payment for, or return of, any premium, consideration, or property paid or donated by the Member Agency to the Authority, or to any distribution of assets.

(e) If a Member Agency provides less than the required period of notification of termination and/or withdrawal, or if such notice is not clear and unequivocal, that Member Agency shall remain a participant for the next Coverage Period, as defined in the Liability Risk Coverage Agreement, and should be liable to the Authority for all Premiums provided for its said Agreement.

ARTICLE 22. TERMINATION AND DISTRIBUTION

(a) This Agreement may be terminated by the written consent of three-fourths (3/4) of the Member Agencies, provided, however, that this Agreement and the Authority shall continue to exist for the purpose of disposing of all claims, distribution of assets and all other functions necessary to wind up the affairs of the Authority, and Member Agencies shall continue to honor all obligations arising under this Agreement and the Liability Risk Coverage Agreement until the business affairs of the Authority are finalized.

(b) Upon termination of this Agreement, all assets of the Authority shall, after payment of all unpaid costs, expenses and charges incurred under this Agreement, be distributed among the parties that have been Participants of the joint protection program under the Liability Risk Coverage Agreement, including any of those parties which previously withdrew pursuant to Article 21 of this Agreement, in accordance with and proportionate to their cash (including premium) payments and property contributions, if any (at market value when received by the Authority), made during the term of this Agreement. The Board shall determine such distribution within six (6) months after the last pending claim or loss covered by the Liability Risk Coverage Agreement has finally been disposed of in accordance with that agreement.

(c) The Board is vested with all powers of the Authority for the purpose of

concluding and dissolving the business affairs of the Authority. The decision of the Board under this Article shall be final.

ARTICLE 23. NEW MEMBERS

Additional qualified agencies shall be permitted to become parties to this Agreement with the written approval of a majority of the members of the Board and upon compliance with all applicable requirements of the Joint Powers Law, this Agreement, and the Liability risk Coverage Agreement. Agencies joining the Authority under this Article shall be required to pay their share of organizational expenses as determined by the Board. The Board may also charge an entrance fee to new members which shall be distributed on a pro rata basis among the original Member Agencies of the Authority to defray their initial expenses in creating the Authority. The date of admission of a new member to the Authority shall be determined by the Board.

ARTICLE 24. LIABILITY OF MEMBER AGENCIES, BOARD MEMBERS, OFFICERS AND COMMITTEE MEMBERS

(a) The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of the Members Agencies. Any Member Agency may separately contract for, or assume responsibility for, specific debts, liabilities or obligations of the Authority. Pursuant to Section 895.2 of the Government Code, the Member Agencies may be jointly and severally liable for any liability which is imposed by any law for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement. In the event that such liability arises out of a negligent or wrongful act or omission with respect to a negligent or wrongful act or omission with respect to an Insurance Program, the Member Agencies hereby provide, pursuant to Section 895.6 of the Government Code, that such liability shall be borne by the Member Agencies participating in such Insurance Program in the same proportion as administrative expenses of the Insurance Program are allocated among such participating Member Agencies at the time the liability is determined. In the event a Member Agency is held liable upon any judgment for damages caused by such an act or omission and makes payment in excess of its proportional share, as determined in the preceding sentence, such Member Agency is entitled to reimbursement from each of the Member Agencies which have not paid their proportional share.

(b) The members of the Board, officers and committee members of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement, they shall not be liable for any mistake of judgment or any other action made, taken or omitted by any agent, employee or independent contractor selected with reasonable care, nor for loss incurred through investment of Authority funds, or failure to invest. No director, officer or committee member shall be responsible for any action taken or omitted by any other director, officer or committee member. No director, officer or committee member shall be required to give a bond or other security to guarantee the faithful performance of his or her duties to this Agreement.

ARTICLE 25. NOTICES

Notices and other communications to Member Agencies under this Agreement shall be sufficient if delivered or sent by first-class mail to the office of the Chief Administrative Officer, or Fire Chief, of the respective Member Agency. Each Member Agency shall provide the Authority with the address to which such communications are to be sent. Notices and other communications to the Authority shall be sufficient if delivered or sent by first-class mail to the office of the General Manager and to the office of the President of the Authority. The Authority shall provide each Member Agency with the address of such officers promptly after their election or appointment.

ARTICLE 26. PROHIBITION AGAINST ASSIGNMENT

No Member Agency may assign any right, claim, or interest it may have under this Agreement, and any purported assignment shall be void. No creditor, assignee or third party beneficiary of any Member Agency shall have any right, claim, or title to any part, share, interest, fund, premium or asset of the Authority.

ARTICLE 27. AMENDMENT TO AGREEMENT

This Agreement may be amended from time to time with the consent of a majority of the Member Agencies voting on the proposed amendment, so long as not less than 51% of the Member Agencies have voted, acting through their legislative bodies, and in compliance with all applicable requirements of the Joint Powers Law. Any amendment of this Agreement shall become effective upon receipt by the Authority of notice of the approval of such amendment by the legislative bodies of a majority of the Member Agencies voting on the proposed amendment, so long as not less than 51% of the Member Agencies have voted, and satisfaction of the applicable requirements of the Joint Powers Law.

ARTICLE 28. AGREEMENT COMPLETE

The foregoing constitutes the full and complete Agreement of the parties with respect to the matters set forth herein. In the event of conflict between the terms of this Agreement and the Liability Risk Coverage Agreement, the Liability Risk Coverage Agreement shall control.

Should any portion, term, condition, or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions shall not be affected thereby.

ARTICLE 29. FILING WITH SECRETARY OF STATE

The Secretary of the Board shall file a copy of this Agreement with the Office of the California Secretary of State within thirty (30) days of its execution as required by Government Code Section 6503.5.

ARTICLE 30. AFFIRMATIVE ACTION

The Authority shall comply with the nondiscrimination and affirmative action provisions of the laws of the United States of America and the State of California. In performing the terms and conditions of this Agreement, the Authority, and its Member Agencies, shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, age, or physical handicap.

ARTICLE 31. BYLAWS

The Board may adopt Bylaws consistent with this Agreement which shall provide for the administration and management of the Authority.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers.

FIRE PROTECTION DISTRICT

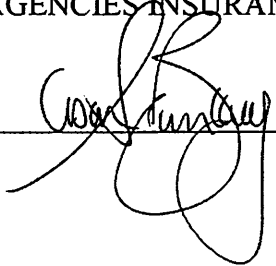
Dated: _____

BY: _____

ATTEST: _____

FIRE AGENCIES INSURANCE RISK AUTHORITY

Dated: 10/18/2019

BY:  _____

LIABILITY RISK COVERAGE AGREEMENT

Dated as of September 9, 2019

among the

FIRE AGENCIES INSURANCE RISK AUTHORITY

and

THOSE MEMBER AGENCIES NAMED IN EXHIBIT A HERETO

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**FIRE AGENCIES INSURANCE RISK AUTHORITY
FIRST AMENDED LIABILITY RISK COVERAGE AGREEMENT**

THIS FIRST AMENDED LIABILITY RISK COVERAGE AGREEMENT ("Agreement") by and among the FIRE AGENCIES INSURANCE RISK AUTHORITY, a joint exercise of powers agency duly organized and existing under California law, including, without limitation, Section 6500 et seq. of the Government Code, as provider (the "Authority"), and those agencies listed in Exhibit A hereto, each duly organized and existing under California law (each a "Participating Member Agency" and collectively, the "Participating Member Agencies").

This Agreement was originally approved by action of a majority of the Participating Member Agencies and a majority of the Governing Board, as required by Section 7.3 of the Liability Risk Coverage Agreement dated February 1, 1993. The original consent of such Participating Member Agencies, acting through their legislative bodies, and in compliance with all applicable requirements of the Joint Powers Law, was received on September 9, 2019. This Agreement supersedes the original Liability Risk Coverage Agreement dated February 1, 1993 and is effective as to individual Member Agencies when it is executed consistent with the procedures set forth herein.

WITNESSETH:

WHEREAS, the Authority is a joint powers authority of which each Participating Member Agency is a member;

WHEREAS, the Authority is authorized to exercise necessary powers to implement the purposes of the Authority as set forth in the Joint Powers Agreement and as established by the Authority's Governing Board;

WHEREAS, the Authority has determined to provide each Participating Member Agency with Coverage for liability risks through this Agreement;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

**ARTICLE I
DEFINITIONS; EXHIBITS AND SCHEDULES**

SECTION 1.1 Definitions and Rules of Construction. Unless the context otherwise requires, the capitalized terms used herein shall, for all purposes of this Agreement, have the meanings herein specified. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement as a whole.

"Actuary" means a firm with at least one employee who is both a Fellow of the Casualty Actuarial Society and a Member of the American Academy of Actuaries, which firm is appointed by the Authority with the approval of at least a majority of the Authority's Governing Board.

"Authority" means the Fire Agencies Insurance Risk Authority, a joint exercise of powers authority duly organized and existing under California law.

"Case Reserves" means those amounts in the Central Loss Fund required to be designated as

reserves for payment of Claims in accordance with Section 7.1.

"Claim" means a demand by a Covered Party to recover for any damage, loss, cost, or expense within or alleged to be within the scope of Coverage afforded by the Authority.

"Central Loss Fund" means the Central Loss Fund established for the payment of Claims pursuant to Section 5.2.

"Coverage" means the pooled self-insurance liability coverage program(s) afforded by the Authority to the Participating Member Agencies pursuant to this Agreement and any Memorandum of Coverage applicable to the Participating Member Agencies.

"Coverage Period" means each annual period for which a Participating Member Agency pays a Premium and obtains Coverage pursuant to a Memorandum of Coverage, which period commences on 12:01 a.m. Pacific Time on July 1, and continues through July 1st 12:01 a.m. Pacific Time of the subsequent year.

"Covered Party" means a Participating Member Agency which has paid a Premium, which has not been expelled or withdrawn from Coverage pursuant to the terms of this Agreement, and which qualifies as a Named Covered Party under a Memorandum of Coverage and any person or organization who qualifies as an Additional Covered Party under such Memorandum of Coverage.

"Effective Date" means the date which consent to this Agreement was provided by the majority of Participating Member Agencies, acting through their legislative bodies, and in compliance with all applicable requirements of Joint Powers Law.

"Governing Board" means members of the Board of Directors of the Authority; provided that only members representing Participating Member Agencies shall be entitled to vote on any action with respect to the Coverage program established by this Agreement, and any references in this Agreement to a majority or specified percentage of the Governing Board shall be deemed to mean a majority or specified percentage of Participating Member Agency members of the Governing Board.

"General Manger" means the general manager of the Authority selected in accordance with the Joint Powers Agreement.

"Joint Powers Agreement" means the Fifth Amended Joint Powers Agreement, dated as of October 22, 2008, among the Member Agencies creating the Authority, or other adopted Amendment thereafter.

"Loss Reserves" means the amounts in the Central Loss Fund required to be designated as reserves for payment of Claims pursuant Section 7.2.

"Operating Fund" means that fund established by the Authority as set forth in the Joint Powers Agreement.

"Member Agency" means each public agency which is party to the Joint Powers Agreement, or any amendment thereto and is a member of the Authority.

"Memorandum of Coverage" means the agreement(s) between the Authority and each Participating Member Agency which sets forth the terms, conditions, and limits of Coverage afforded by the Authority to such Participating Member Agencies during each Coverage Period.

"Participating Member Agency" means each Member Agency which is a party to this Agreement, or any amendment thereto, who has not withdrawn or been expelled from Coverage, as set forth in Section 7.3.

"Payment Date" means June 15 of each year during the term of this Agreement.

"Premium" means the amount payable by each Participating Member Agency on or before each Payment Date in order for such Participating Member Agency to participate in the Coverage afforded under the Memorandum of Coverage applicable to each Coverage Period.

"Qualified Claims Auditor" means an individual or an organization experienced in the handling of public entity liability claims, appointed by the Authority with the approval of a majority of the members of the Authority's Governing Board, who shall be independent of any party who administers Claims on behalf of the Authority throughout each Coverage Period.

"Premium Adjustment" means the amount assessed or refundable to each current or former Participating Member Agency, as further set forth in Section 4.5.

"Premium Proportion" means, with respect to any Participating Member Agency and with respect to any Coverage Period, the percentage of Premium required to be paid by such Participating Member Agency in such Coverage Period as compared to the sum of all Premiums paid by all Participating Member Agencies in such Coverage Period.

"Risk Sharing Pool" means a specific program of pooled self-insurance liability coverage applicable to one or more Participating Member Agencies. The Authority may establish one or more pools in subsequent Coverage Periods in compliance with Article VI.

"Settlement" means the settlement by the Authority of a Claim.

"Term" means the period of time during which this Agreement is in effect, as provided in Section 4.1 herein.

"Treasurer" means the treasurer of the Authority selected in accordance with the Joint Powers Agreement.

"Undesignated Reserves" means the amount in the Central Loss Fund in excess of the total amount that has been designated as Loss Reserves pursuant to Article VI.

SECTION 1.2 Exhibits. The following Exhibits are attached to, and by reference made a part of, this Agreement:

- (a) Exhibit A: List of Participating Member Agencies.
- (b) Exhibit B: Methodology for Calculating Premium Proportion.

ARTICLE II COVERAGE; PURCHASE OF COMMERCIAL INSURANCE OR REINSURANCE

SECTION 2.1 Coverage. The Authority hereby provides Coverage to each Participating Member Agency, and each Participating Member Agency hereby agrees to accept such Coverage, upon the terms and conditions set forth in this Agreement.

SECTION 2.2 Purchase of Commercial Insurance or Reinsurance. In the sole discretion of the Governing Board of the Authority, the Authority may provide for all or a portion of the Coverage afforded to the Participating Member Agencies during each Coverage Period through the purchase of insurance or reinsurance from a commercial insurer or reinsurer on behalf of the Participating Member Agencies. The Authority shall use its best efforts to obtain group discounts on the purchase of such insurance or reinsurance. The Authority shall continue to be obligated to pay amounts due on Covered Claims from moneys in the Central Loss Fund even in the event such commercial excess insurance or reinsurance fails to pay such Covered Claims or is insufficient for such Covered Claim.

ARTICLE III REPRESENTATIONS, COVENANTS AND WARRANTIES

SECTION 3.1 Representations, Covenants and Warranties of the Participating Member Agencies. Each Participating Member Agency makes the following representations, covenants and warranties to the Authority.

(a) Recitals. The recitals to this Agreement are true and correct.

(b) Due Organization and Existence. Such Participating Member Agency is a local agency of the county in which it is located, duly organized and existing under California law [or Nevada law, as applicable](#).

(c) Authorization; Enforceability. California law [or Nevada law, as applicable](#), authorizes such Participating Member Agency to enter into this Agreement and to enter into the transactions contemplated by and to carry out its obligations under all of the aforesaid agreements, and the Participating Member Agency has duly authorized and executed all of the aforesaid agreements. This Agreement constitutes the legal, valid, binding and enforceable obligation of such Participating Member Agency in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally and except as to the limitations on remedies against public agencies generally.

(d) Budget Appropriations. Each Participating Member Agency covenants to take such action as may be necessary to ensure that its legislative body includes Premium and Premium Adjustment payments payable hereunder in its annual budget and to make the necessary annual appropriations for all such Premium and Premium Adjustment payments due hereunder. During the Term, each Participating Member Agency will furnish to the Authority and the Treasurer prompt written evidence of such budget or appropriation (which may be evidence of payment of such amounts) in each such Coverage Period no later than 30 days after filing or adoption. The covenants on the part of each Participating Member Agency herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of each Participating Member Agency to take such action and do such things as are required by law in the performance of the official duty of such officials to enable each Participating Member Agency to carry out and perform the covenants and agreements in this Agreement agreed to be carried out and performed by such Participating Member Agency.

(e) No Violations. Neither the execution and delivery of this Agreement by such Participating Member Agency, nor the fulfillment of or compliance with the terms and conditions hereof by such Participating Member Agency, nor the consummation of the transactions contemplated hereby by such Participating Member Agency, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which such Participating Member Agency is now a party or by which such Participating Member Agency is bound or constitutes a default under any of the foregoing.

(f) Compliance with Claims Administration Standards. Each Participating Member Agency hereby expressly covenants to comply with the Underwriting and Claims Administration conducted by the Authority and the obligations set forth in the terms and conditions of each Memorandum of Coverage applicable to such Participating Member Agency.

(g) Accuracy of All Records. Each Participating Member Agency hereby expressly covenants that all information supplied to the Authority relating to the Coverage provided by this Agreement is true and accurate.

SECTION 3.2 Representations, Covenants and Warranties of the Authority. The Authority represents, covenants and warrants to each Participating Member Agency as follows.

(a) Recitals. The recitals to this Agreement are true and correct.

(b) Due Organization and Existence; Enforceability. The Authority is a joint exercise of powers authority duly organized, existing and in good standing under and by virtue of California law, authorized under California law to enter into this Agreement; is possessed of full power to provide pooled self-insurance to consenting public entities; and has duly authorized the execution and delivery of all of the aforesaid agreements. This Agreement constitutes the legal, valid, binding and enforceable obligations of the Authority, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(c) Equitable Exercise of Responsibilities. The Authority will exercise all rights and responsibilities hereunder reasonably and equitably for the benefit of all Participating Member Agencies without preference or discrimination among Participating Member Agencies.

(d) No Violations. Neither the execution and delivery of this Agreement nor the fulfillment of or compliance with the terms and conditions hereof nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of the Bylaws of the Authority or any restriction or any agreement or instrument to which the Authority is now a party or by which the Authority is bound, or constitutes a default under any of the foregoing.

(e) Settlements. The Authority hereby covenants, to the extent that it has control over any negotiation or structuring of a Settlement, not to effect Settlement payment to be scheduled to occur at any time for which the Central Loss Fund is not anticipated to be fully funded to cover such Settlement payment.

ARTICLE IV TERM AND TERMINATION

SECTION 4.1 Term and Termination. The Term of this Agreement shall commence on the

Effective Date and shall continue in force and effect until terminated. This Agreement may be terminated upon the occurrence of either of the following events: (i) termination of the Joint Powers Agreement, or (ii) upon the unanimous consent of the Participating Member Agencies the Authority's Governing Board. Even after termination, this Agreement and the Authority shall continue to exist for the purpose of disposing of all Claims, distribution of assets and all other functions necessary to wind up the affairs of the Authority and this Agreement.

SECTION 4.1 Effect of Termination. Effective upon termination of this Agreement, all Coverage afforded the Participating Member Agencies under this Agreement shall terminate, and the obligation of the Participating Member Agencies to pay Premiums for any subsequent Coverage Periods shall cease. However, the obligations of the Participating Member Agencies to pay Premiums and Premium Adjustments, and the rights to receive Premium Adjustment refunds, with respect to Coverage Periods applicable to the Participating Member Agencies prior termination shall continue after termination. Upon and termination of this Agreement and the termination of all Participating Member Agency obligations to pay Premium Adjustments, the Authority will distribute any outstanding Premium Adjustment refunds to the Participating Member Agencies.

ARTICLE V PAYMENT OF PREMIUMS AND PREMIUM ADJUSTMENTS

SECTION 5.1 Obligation to Pay Premiums and Premium Adjustments. Each Participating Member Agency shall pay a Premium for each Coverage Period and may be assessed or refunded a Premium Adjustment in consideration for the Coverage afforded by the Authority during previous Coverage Periods.

SECTION 5.2 Notice of Payment Amount. The Authority shall calculate and mail notice, no later than April 15 of each year, to each Participating Member Agency of the amount of Premium and Premium Adjustment to be payable by each Participating Member Agency on the following Payment Date.

SECTION 5.3 Payment. On or before each Payment Date, each Participating Member Agency shall pay to the Authority the amount of its Premium and any Premium Adjustment assessed. The Authority shall direct the Treasurer to deposit the Premium and Premium Adjustments received into the Central Loss Fund and the Operating Fund as shall be necessary to satisfy the terms of this Agreement. All moneys held hereunder shall be invested in accordance with the terms of the Joint Powers Agreement.

SECTION 5.4 Premium Calculation. On or before the April 1 preceding each Coverage Period, each Participating Member's Premium Proportion of each Risk Sharing Pool shall be determined by an Actuary in accordance with the methodologies set forth in Exhibit B to this Agreement, as may be amended from time to time by the Governing Board. For each Risk Sharing Pool, the General Manager shall calculate the amount of Premium due from each Participating Member Agency for the upcoming Coverage Period by multiplying each Participating Member Agency's Premium Proportion by an amount equal to the sum of the amount established as the Loss Reserve plus the cost of any commercial insurance or reinsurance purchased by the Authority for that Coverage Period. Such Premium amounts as calculated by the General Manager shall become final upon approval of the Governing Board.

SECTION 5.5 Premium Adjustment Calculation.

(a) **Time of Determination.** On or prior to April 1 of each year, upon receipt of the annual report of the Qualified Claims Auditor pursuant to Sections 7.1 and 7.2, the Authority shall determine the amount of Case Reserves for all Claims to be established or adjusted with respect to all prior Coverage Periods as set forth in the report of the Qualified Claims Auditor. On or prior to April 15 of each year the Authority shall determine, based upon the establishment or adjustment of such Case Reserves, the Premium Adjustment for each Participating Member Agency, which may be either an assessment of additional amounts due or a refund of Premium or Premium Adjustments paid in prior Coverage Periods.

(b) **Manner of Determination.** Premium Adjustments shall be determined as follows:

(i) Premium Adjustments with respect to any Coverage Period are intended to provide a matching of outstanding Case Reserves required with respect to each Coverage Period, with the sum of amounts paid as Premium, or which were paid or refunded as Premium Adjustments, and certain investment earnings on amounts with respect to such Coverage Period;

(ii) the Premium Adjustment determined with respect to any Participating Member Agency with respect to any Coverage Period shall be equal to that Participating Member Agency's Premium Proportion for that Coverage Period multiplied by the total of all Premium Adjustments determined by the Qualified Claims Auditor with respect to that Coverage Period. In no event shall Premium Adjustment refunds for any Coverage Period, in the aggregate, exceed fifty percent (50%) of the Premiums paid and Premium Adjustment assessments scheduled to be paid by all Participating Member Agencies towards such Coverage Period; however, after all known claims in a Coverage Period are closed, all remaining surplus may be refunded proportionately according to each Participating Member Agency's Premium Proportion for that Coverage Period.

(iii) the Premium Adjustment for investment earnings on the Central Loss Fund, if any, shall be allocated according to the ratio of Premium paid by each Participating Member Agency in all Coverage Periods to Premium paid by all Participating Member Agencies in all Coverage Periods;

(c) **Premium Adjustments and Commercial Insurance and Reinsurance.**

(i) Except as set forth immediately, below, and except to the extent such obligations or rights which may arise under such commercial insurance or reinsurance, no Participating Member Agency shall have any obligation to pay and no right to receive Premium Adjustments with respect to any Coverage for which the Authority has purchased commercial insurance or reinsurance on behalf of such Participating Member Agency.

(ii) In the event the Authority is obligated, as set forth in Section 2.2, to pay amounts due on Claims from moneys in the Central Loss Fund due to the failure or refusal of any commercial insurer or reinsurer to pay all or a portion of any covered Claims to which such insurance or reinsurance applies, the Participating Member Agencies shall be obligated to pay Premium Adjustments with respect to such payments.

SECTION 5.6 No Withholding. Notwithstanding any dispute between the Authority and a Participating Member Agency, or any dispute between the Authority or any Participating Member Agency and any commercial insurer or reinsurer, each Participating Member Agency shall make all Premium and Premium Adjustments payments when due and shall not withhold any Premium or

Premium Adjustments payments pending the final resolution of such dispute.

SECTION 5.7 Appeal of Premium Amounts. The Governing Board of the Authority may establish an appeal process for the challenge of any Premiums or Premium Adjustments imposed under this Agreement, but such appeal may be based solely on financial hardship of the Participating Member Agency.

SECTION 5.8 Interest Rate on Overdue Payments. In the event a Participating Member Agency fails to make any of the payments required in this Article, the payment in default shall continue as an obligation of the Participating Member Agency until the amount in default shall have been fully paid, and in addition to any remedies available with respect to such default, the Participating Member Agency agrees to pay the same with interest thereon, at five percent (5%) per annum, but not to exceed the highest rate permitted by law, from the date such amount was originally payable.

ARTICLE VI PAYMENT OF ADMINISTRATIVE COSTS AND CLAIMS

SECTION 6.1 Payment of Administrative Costs. Payment of administrative costs associated with this Agreement shall be made from the moneys deposited with the Treasurer in the Operating Fund established in accordance with the terms of the Joint Powers Agreement and shall be disbursed in accordance and upon compliance therewith.

SECTION 6.2 Payment of Claims. The Authority shall establish a Central Loss Fund for the payment of Claims. Claims shall be paid upon submission to the Treasurer of properly completed requisitions executed by the Authority requesting such payment from moneys in the Central Loss Fund held by the Treasurer. Requisitions shall be paid by the Treasurer in the sequential order received. Payment of Claims shall be made solely from any moneys in the Central Loss Fund, including Loss Reserves and Undesignated Reserves as provided in Article VII. If at any time sufficient moneys are not on deposit in the Central Loss Fund to pay in full any Claim upon submission to the Treasurer of a properly completed requisition as described herein, such requisition for payment shall be paid in part to the extent of available moneys in the Central Loss Fund and the Treasurer shall promptly give notice of such insufficiency to the Authority, who shall in turn give prompt notice to all Participating Member Agencies, that such an event has occurred.

ARTICLE VII CASE RESERVES AND LOSS RESERVES

SECTION 7.1 Case Reserves. Each year the Authority shall retain a Qualified Claims Auditor for the purpose of submitting an annual report to the Authority on or prior to each to January 1 of setting forth (a) the amount of Case Reserves necessary to be established with respect to each Claim arising during the preceding full Coverage Period and a breakdown of the amount of Case Reserves applicable to each Risk Sharing Pool, and (b) any adjustments (whether upward or downward) necessary to be made in the amount of each Case Reserve previously established pursuant to this Section. In determining the amount of Case Reserves necessary to be established or adjusted as described above, the Qualified Claims Auditor shall consider (a) the recommendations of the Liability Claims and Underwriting Committee of the Authority, (b) the annual report of the Qualified Claims Auditor, and (c) such facts and circumstances occurring during the period covered by such report as it, in its independent judgment, deems necessary in accordance with prudent liability coverage practices. There shall be no Case Reserves established for a Claim or any portion thereof within a Participating Member Agency's deductible amount, or which is covered by commercial insurance or reinsurance

SECTION 7.2 Loss Reserves. The Authority shall direct the Treasurer to establish or adjust Loss Reserves in the Central Loss Fund. Loss Reserves shall be initially established for each Coverage Period at the time the Premium is due with respect to such Coverage Period in accordance with the report prepared by an Actuary on or before January 1 of each year. Adjustments in subsequent Coverage Periods to Loss Reserves previously established shall be based only upon establishment of and adjustments to Case Reserves in accordance with the report of the Qualified Claims Auditor described above. Such report of the Qualified Claims Auditor shall be in a form such that Premium Adjustments can be determined for each Participating Member Agency, Coverage Period, and Risk Sharing Pool. The Authority may direct the Treasurer to establish Loss Reserves in excess of those designated in the reports of the Actuary and Qualified Claims Auditor if the Authority determines with the Qualified Claims Auditor the existence of such facts and circumstances occurring during the period covered by such report which deem it necessary to establish excess reserves in accordance with prudent liability coverage practices. Such annual adjustment shall be made on the April 1 following receipt of the annual report of the Qualified Claims Auditor. The parties acknowledge that under certain circumstances it will be necessary to establish Case Reserves in excess of the amounts then on deposit in the Central Loss Fund. In such event, such Case Reserves will nevertheless be established as provided in this Section and funded, through the payment of Premium Adjustments, as provided in Section 5.5 hereof.

SECTION 7.3 Priority. Upon the payment of any Claim from amounts on deposit in the Central Loss Fund such amounts shall be deemed reduced in the following order of priority: first, from Case Reserves established to pay such Claim; second, from Loss Reserves other than Case Reserves; third, from Undesignated Reserves; and fourth, from designated Case Reserves established to pay other Claims (pro rata among such other Case Reserves on the basis of the respective amounts of such Case Reserves).

SECTION 7.4 Investment Earnings. Investment earnings retained in the Central Loss Fund shall be credited first to replenish designated Loss Reserves which have previously been reduced to pay other Claims, and then to Undesignated Reserves. Amounts designated as Loss Reserves shall not be increased except as provided in this Section.

ARTICLE VIII ADMISSION AND WITHDRAWAL FROM THIS AGREEMENT

SECTION 8.1 Procedures for Admission. The Authority shall permit a Member Agency to become a Participating Member Agency under this Agreement as follows:

- (a) Not later than the February 1 preceding the first Coverage Period for which the applicant Member Agency desires Coverage, the Member Agency must submit a completed application for Coverage.
- (b) The Authority shall obtain a certificate from an Actuary that admission of the applicant Member Agency will not adversely affect the actuarial soundness of the Risk Sharing Pool in which the applicant Member Agency wishes to participate.
- (c) A qualified insurance claims consultant-broker shall review the underwriting history of the applicant Member Agency and provide to the Authority and the underwriting committee of the Authority a written opinion as to whether providing Coverage to the applicant Member Agency will or will not constitute a hazardous or unacceptable risk or loss exposure to the Authority, and why. Such opinion shall include at least the past five (5) years of claims and the litigation history of the applicant Member Agency, including trial or arbitration verdicts and awards.

(d) At the discretion of the Authority's Governing Board, the applicant Member Agency may be assessed an annual surcharge or fee or be required to make a deposit into the Central Loss Fund by the Authority as a condition to its admission to this Agreement.

(e) The Authority's Governing Board shall, by at least a majority vote, approve admission of the applicant Member Agency as a Participating Member Agency and execute this Agreement.

(f) The applicant Member Agency must execute this Agreement, at which time the applicant Member Agency shall become a Participating Member Agency, and shall become bound and obligated to comply with all of the terms and conditions of this Agreement, including the obligation to pay Premiums and Premium Adjustments as set forth herein.

(g) The new Participating Member Agency must pay its initial Premium and any surcharge or fee or deposit required by the Governing Board on or before the first Payment Date next succeeding the date of execution of this Agreement by such Participating Member Agency and the Authority. Coverage of the new Participating Member Agency shall become effective on the first day of the Coverage Period next succeeding the date of execution of this Agreement by such Participating Member Agency and the Authority

SECTION 8.2 Procedures for Withdrawal.

(a) Procedure for Withdrawal. A Participating Member Agency may withdraw from this Agreement by submitting a written request to withdraw. If the Participating Member Agency is not in default as set forth in Section 11.1, the Participating Member Agency's withdrawal shall become effective on the last day of the Coverage Period which first commenced within the twelve (12) month period following the request to withdraw. Once a request to withdraw has been submitted to the Authority, withdrawal shall be revocable only with the consent of the Authority.

(b) Effect of Withdrawal. Effective upon on the date of withdrawal, all Coverage obligations of the Authority shall cease and the withdrawn agency shall have no further obligation to pay Premiums towards any subsequent Coverage Periods. However, any withdrawn agency shall still remain obligated to pay: (i) all fees and expenses assessed the Authority as a result its withdrawal, (ii) Premium Adjustments respect to Coverage Periods applicable to the agency prior to its withdrawal, (iii) all consequential damages incurred by the Authority a result of any failure of the agency to pay future Premium Adjustments when due. In the event a withdrawn agency has failed to pay all such amounts when due, any future Premium Adjustment refunds owed the withdrawn agency shall be credited against all amounts due and outstanding, and the withdrawn agency shall not be entitled to receive Premium Adjustment refunds until all amounts due have been paid or credited in full. Such credits shall be applied first towards any consequential damages incurred by the Authority and then towards Premium Adjustment amounts due in chronological order, with Premium Adjustments amounts due toward older Coverage Periods being paid first. The Authority shall be under no obligation to pay Claims or otherwise provide Coverage to any withdrawn agency with respect to Coverage Periods in which a Premium Adjustment has been assessed but not paid.

ARTICLE IX EVENTS OF DEFAULT AND REMEDIES

SECTION 9.1 Events of Default. The following shall be "Events of Default" under this Agreement and the terms "Events of Default" and "Default" shall mean, whenever they are used in this Agreement

with respect to a Participating Member Agency, any one or more of the following events:

(a) failure by a Participating Member Agency to pay the Premium or Premium Adjustment on or before the Payment Date;

(b) failure by a Participating Member Agency to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, or any Memorandum of Coverage, other than as referred to in subsection 9.1(a), above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to such Participating Member Agency by the Authority; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Authority shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Participating Member Agency within the applicable period and diligently pursued until the default is corrected; or

(c) the filing by a Participating Member Agency of a case in bankruptcy, or the subjection of any right or interest of such Participating Member Agency under this Agreement to any execution, garnishment or attachment, or adjudication of such Participating Member Agency as a bankrupt, or assignment by such Participating Member Agency for the benefit of creditors, or the entry by such Participating Member Agency into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Participating Member Agency in any proceedings instituted under the provisions of the federal bankruptcy code, as amended, or under any similar act which may hereafter be enacted.

SECTION 9.2 Remedies Upon Default. In the Event of Default of any Participating Member Agency, it shall be lawful for the Authority to exercise any and all remedies available pursuant to law or granted pursuant to this Agreement, including but not limited to expulsion of such defaulting Participating Member Agency as set forth below. Upon the occurrence of any Event of Default as a result of the failure to pay any Premium or Premium Adjustment as described in subsection 9.1(a), the Authority shall, subject to the procedures set forth in Section 9.3, cancel all Coverage rights of the defaulting Participating Member Agency for the portion of the then-current Coverage Period commencing with the Event of Default and ending with its cure.

SECTION 9.3 Cancellation of Coverage. The Governing Board of the Authority, may, by at least a majority vote, approve the cancellation of Coverage for any Participating Member Agency in the Event of Default as a result of the failure to pay any Premiums or Premium Adjustment as described in subsection 9.1(a). Such cancellation shall become effective upon ten (10) days' written notice of such cancellation to the defaulting Participating Member Agency.

SECTION 9.4 Expulsion.

(a) **Procedure for Expulsion.** Upon an Event of Default of a Participating Member Agency, the Governing Board of the Authority, may, by at least a majority vote, approve the expulsion of the Participating Member Agency this Agreement. The expulsion shall become effective sixty (60) days after written notice of expulsion is given to the defaulting Participating Member Agency; provided, however, that only ten (10) days' written notice need be given to any Participating Member Agency who is in default as a result of the failure to pay any Premium or Premium adjustment as described in subsection 11.1(a).

(b) Alternative to Expulsion. Upon an Event of Default as described in subsections 9.1(a) or (b), in the sole discretion of the Governing Board, the Authority may provide the defaulting Participating Member Agency with the option to pay penalty fee equal to 25% of the defaulting Participating Member Agency's Premium for the Current Coverage period in lieu of expulsion. If such option is authorized by the Governing Board, notice of such option shall be provided to the defaulting Participating Member along with the required notice of expulsion as set forth in subsection 11.4(a), above. In such event, the expulsion of the defaulting Participating Member Agency shall nonetheless become effective if the defaulting Participating Member Agency fails to pay the penalty fee and to cure the default within the notice period set forth in subsection 9.4(a), above.

(c) Effect of Expulsion. Effective upon on the date of expulsion, all Coverage obligations of the Authority shall cease and the expelled agency shall have no obligation to pay Premiums towards any subsequent Coverage Periods. However, any expelled agency shall still remain obligated to pay: (i) Premium Adjustments respect to Coverage Periods applicable to the expelled agency prior expulsion and (ii) all consequential damages incurred by the Authority a result of the agency's default under this Agreement. In the event an expelled agency has failed to pay all such amounts when due, any Premium Adjustment refunds due to said expelled agency shall be credited against all amounts due and outstanding, and said expelled agency shall not be entitled to receive Premium Adjustment Refunds until all amounts due and outstanding have been paid or credited in full. Such credits shall be applied first towards any consequential damages incurred by the Authority and then towards Premium Adjustment amounts due in chronological order, with Premium Adjustment amounts due towards older Coverage Periods being paid first. The Authority shall be under no obligation to pay Claims or otherwise provide Coverage to any expelled agency with respect to any Coverage Periods in which a Premium Adjustment has been assessed but not paid.

SECTION 9.5 No Remedy Exclusive. No remedy conferred herein upon or reserved to the Authority is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law

ARTICLE X INDEMNIFICATION; DISCLAIMER

SECTION 10.1 Release and Indemnification. Each Participating Member Agency shall and hereby agrees to indemnify and save the Authority and all other Participating Member Agencies and each of their respective governing boards, officers, agents, employees, successors or assigns, harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (i) such Participating Member Agency's breach or default in the performance of any of its obligations under this Agreement or (ii) any act or negligence of the Participating Member Agency or its governing boards, officers, agents, employees, successors or assigns arising out of this Agreement, but not including Claims. No indemnification is made under this Section or elsewhere in this Agreement for claims, losses or damages, including legal fees and expenses to the extent arising out of the willful misconduct, negligence, or breach of duty under this Agreement by the Authority or any other Participating Member Agency, or their respective governing boards, officers, agents, employees, successors or assigns. The provisions of this Section 9.1 shall survive expiration or termination of this Agreement.

SECTION 10.2 Disclaimer. THE AUTHORITY MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE ADEQUACY OF THE COVERAGE FOR THE NEEDS OF ANY PARTICIPATING MEMBER AGENCY.

**ARTICLE XI
MISCELLANEOUS**

SECTION 11.1 Assignment. The Authority will not assign this Agreement, its right to receive payments from any Participating Member Agency, or its duties and obligations hereunder; provided, however, that nothing herein shall limit the right of the Authority to purchase commercial insurance or reinsurance on behalf of the Participating Member Agencies as set forth herein. This Agreement may not be assigned by any Participating Member Agency, and any purported assignment shall be void.

SECTION 11.2 Amendment.

(a) This Agreement may be amended with the consent of a majority of the Participating Member Agencies and a majority of the Authority's Governing Board. No amendment to this Agreement shall become effective unless that Authority has provided all Participating Member Agencies with no less than ninety (90) days' written notice of such proposed amendment. Unless authorized by all of the Participating Member Agencies, any amendments shall become effective only as of the beginning of the next applicable Coverage Period.

(b) Exhibit A shall be updated by the General Manager on at least an annual basis in order to accurately reflect the names of all Participating Member Agencies who have entered into and are subject to this Agreement during each Coverage Period.

(c) Exhibit B may be amended by approval of the majority of the Authorities Governing Board.

SECTION 11.3 Agreement to Pay Attorneys' Fees and Expenses. In the event any party to this Agreement should default under any of the provisions hereof and the nondefaulting parties should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party contained herein, the defaulting party agrees that it will on demand therefore pay to the nondefaulting parties the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting parties awarded to the nondefaulting parties by a court of competent jurisdiction.

SECTION 11.4 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be a waiver of any other breach hereunder.

SECTION 11.5 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received five business days after deposit in the United States mail in certified form, postage prepaid, to the Participating Member Agencies or the Authority. Notice to each Participating Member Agency shall be made to the contact address provided to the Authority by each Participating Member Agency. Notice to the Authority shall be addressed to the General Manager at 1255 Battery St, Suite 450, San Francisco, CA, or other address as may be communicated by the Authority to the Participating Member Agencies from time to time.

SECTION 11.6 Binding Effect. This Agreement shall inure to the benefit of and shall be binding

upon the Authority and the Participating Member Agencies and their respective authorized successors and assigns, if any.

SECTION 11.7 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 11.8 Further Assurances and Corrective Instruments. The Authority and the Participating Member Agencies agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Coverage hereby provided or intended so to be or for carrying out the expressed intention of this Agreement.

SECTION 11.9 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

SECTION 11.10 Applicable Law. This Agreement shall be governed, enforced and construed under the laws of the State of California.

SECTION 11.11 6. Interpretation. Any rule of law or legal decision that would require interpretation of this Agreement against the party that drafted it is not applicable and is waived, and this Agreement shall be given a fair and reasonable interpretation in accordance with the meaning of its terms and the intent of the parties. The headings in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction or effect hereof. All terms and words used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include the appropriate number and gender, as the context may require. Any reference to any specific statute, ordinance or other law shall be deemed to include any amendments thereto, or any successor or similar law addressing the same subject matter.

IN WITNESS WHEREOF, the Authority has caused this Agreement to be executed in its name by its duly authorized officers; and the Participating Member Agencies have caused this Agreement to be executed in their respective names by their respective duly authorized officers.

FIRE AGENCIES INSURANCE RISK AUTHORITY

Dated: 10/18/2019

By: 

FIRE PROTECTION DISTRICT

Dated: _____

By: _____

EXHIBIT A

LIST OF PARTICIPATING MEMBER AGENCIES

Listed Members on file at FAIRA offices at 1255 Battery St., Suite 450, San Francisco, CA 94111

EXHIBIT B
METHODOLOGY FOR CALCULATING PREMIUM PROPORTION

The Actuary should consider the loss experience and exposures of the Participating Member Agencies as well as the experience of other California fire protection districts, other public agencies, and other risks, as appropriate. The Actuary should consider, as appropriate, the experience of the great many claims for small amounts, the less frequent claims for large amounts, and the highly infrequent claims for very large amounts.

The Actuary should estimate the frequency and average cost of claims, unless it is more appropriate to deal directly with the loss rate itself. Additional analyses should be considered when appropriate.

In particular, the Actuary should use models of the loss process whenever doing so would improve the accuracy of the result in a meaningful way.

The Actuary should clearly state the assumptions regarding loss development, the trend in frequency of claims and the average cost per claim, the payout of losses, the interest rate to be earned on the premiums, and other appropriate factors that underlie the calculations.

The Actuary should consider the impact of changes in the claim environment, including, but not limited to, what the data indicates about loss cost inflation; changes in the cost of living (e.g., CPI); changes in the observed frequency of claims; changes in litigation rates; changes in court precedents; changes in the legislative environment; and changes in exposures or hazards.