Report to the Auburn City Council

Action Item

Agenda Item No. 2

City Manager Approval

To:	Mayor and City Council Members
From:	Bernie Schroeder, Director of Public Works Megan Siren, Administrative Analyst/Transit Manager
Date:	October 24, 2011
Subject:	Auburn Transit – California Transit Systems Joint Powers Authority Agreement Amendment

The Issue

Shall the City approve the amended joint powers agreement for the California Transit Systems Joint Powers Authority?

Conclusion and Recommendation

Staff recommends that City Council by **RESOLUTION**, authorize the Director of Public Works to execute the amended joint powers agreement for the California Transit Systems Joint Powers Authority.

Background

The City of Auburn joined California Transit Insurance Pool (CalTIP) Joint Powers Authority in July 1997 to obtain liability coverage and risk management services through jointly pooling resources with the other transit agencies that are members of the Authority. CalTIP members pool funds to obtain affordable insurance coverage, claims administration and safety and loss control programs. The pooling of funds and group purchasing of excess insurance stabilizes risk costs in a reliable, economical and beneficial manner while providing members with broad coverage and quality services in risk management and claims management.

CalTIP was formed with the signing of a joint powers agreement (JPA) by each of its members. The original JPA has never been revised since the formation in 1987. Although the JPA has not changed since the formation of CalTIP, CalTIP itself has evolved. CalTIP has added a vehicle physical damage program, a more robust safety and loss control program, a more refined means of accounting for funds, expense and claims costs. It now participates in a large public entity self-insurance pool for higher limits of liability. CalTIP also transitioned to a committee-based governance structure due to the growth of activities. In addition to CalTIP changing, there have been chances in laws pertaining to joint power authorities, such as specifically allowing distribution of excess contribution based on the claims and losses paid and acknowledging that the withdrawal of one member does not cancel the contract as respects to the other signatories or parties to the agreement. In addition, the original joint powers agreement was restrictive in that it provided detailed information on the one program, the liability program, for which the joint powers authority was initially created. It did not specially recognize the addition of new programs developed to meet the needs of the members, thus the Board of Directors of CalTIP believed it was time to update the

agreement and reflect the changes that have occurred in the last twenty-four years and have a document that will be responsive to future changes in CalTIP, the legal environment, and its members.

The revised Agreement attached was reviewed by the CalTIP Oversight Committee and the Board of Directors. The Agreement was distributed to all the members, asking for comments from each of the members. The comments were brought back to the Oversight Committee and revisions were made to the Agreement. Then the Agreement was taken to the Board of Directors, who commented further and moved to have the Agreement sent to the members' governing bodies for adoption.

The agreement needs to be adopted by the governing bodies of at least three-fourths of the members of CalTIP. Although not all members' adoption is needed, CalTIP believes it best to have all members adopt the amended agreement. The amendments will bring the agreement up to date with current laws and best practices within the risk management joint powers authorities. It will also provide flexibility to the Board of Directors to change its structure and function from time to time as needed. Each member, including the City of Auburn, has representation on the CalTIP Board of Directors and each director has similar interests in the operations of CalTIP because each member operates transit.

The City Attorney has reviewed the amended joint powers agreement. Due to the new JPA shifting many of the sections into the Bylaws, the City Attorney will be involved in the review of amending the Bylaws to ensure that the Bylaws reflect the sections moving from the JPA to the Bylaws.

Alternatives Available to Council; Implications of Alternatives

1. Authorize the execution of the JPA
2. Do not authorize the execution of the JPA

Fiscal Impact

The approval of the JPA will have no impact to the Transit Budget. The participation in CalTIP as a layer of liability insurance and risk management is funded through the State Transportation Development Act (TDA). There will be no impact to the General Fund as a result of this action.

Attachments: Amended CalTIP Joint Powers Agreement – May 2011
Comparison of Amended Joint Powers Agreement to Current Agreement
Resolution

CALIFORNIA TRANSIT SYSTEMS

JOINT POWERS AUTHORITY

JOINT POWERS AUTHORITY AGREEMENT

May 2011

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JOINT POWERS AUTHORITY AGREEMENT

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This Agreement is executed in the State of California by and among those public entities which are parties signatory to this Agreement. All parties signatory to this Agreement shall hereinafter be called "Party" [collectively "Parties"].

RECITALS

Whereas, Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (Section 6500 et seq.) permits two or more public entities, by agreement, to exercise jointly powers common to the contracting parties; and

Whereas, it is the mutual benefit of the Parties and in the public interest that the Parties join together to provide:

- Pooling of their self-insured losses caused by injury to, or disease of, a person or damage to property;
- Sharing the cost of excess insurance or reinsurance, if any, or pooling with other joint powers authorities or public entity pooling arrangement; and
- Sharing the administration of the Authority created by this document.

Whereas, each Party desires to enter into this Agreement with each of the other Parties for the purpose of joint risk sharing and/or insuring against various risk of loss jointly, rather than individually;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

AGREEMENT

This amended Agreement replaces the original Agreement and any prior amendments that may exist.

This Agreement is made under the authority of Government Code Section 6500 et seq. between the undersigned public entities, after the governing boards of the entities determine that it is in their best interest to execute this Agreement.

ARTICLE I - PURPOSE

The purpose of this Agreement is to exercise jointly powers common to each Party by:

- Creating an authority under Government Code Section 6500 et seq., a public entity that is separate and apart from the Parties, to be known as the California Transit System Joint Powers Authority, to administer a self-insurance pool,
- Sharing losses and purchase as a group, insurance or reinsurance and participate in other joint powers authorities or other public entity pooling arrangements,
- Maintaining funds sufficient to pay the losses to which the Parties agree to share through a Coverage Program, and
- Purchasing jointly administrative and other services, including risk management, loss prevention, and legal defense in connection with the Coverage Programs.

ARTICLE II - CREATION OF THE CALIFORNIA TRANSIT SYSTEMS JOINT POWERS AUTHORITY

Pursuant to Government Code Section 6500 et seq., the Parties to this Agreement hereby create a public entity separate and apart from the Parties. This public entity created by this Agreement shall be known as the California Transit Systems Joint Powers Authority.

ARTICLE III - DEFINITIONS

1. "Authority" shall mean the California Transit Systems Joint Powers Authority.
2. "Board" or "Board of Directors" shall mean the governing board of the Authority.
3. "Coverage Programs" shall mean programs as defined and adopted by the Board which may, but need not be limited to pooled risk programs, group purchase of insurance or reinsurance, or participation in other public entity pooling programs.
4. "Coverage Program Documents" shall mean the Master Program Document defining the policies and procedures of the program and the Memorandum of Coverage defining the coverage provided by the program.
5. "Contributions" shall mean payments by Members to the Authority, for other than interest, penalties paid, or reimbursements for payments made on behalf of the Member, for which the Authority is not liable.
6. "Governing Documents" shall be those documents described in Article VII, Governing Documents.
7. "Member" or collectively "Members" shall mean a Party who is participating in a particular Coverage Program.
8. "Party" shall mean a signatory to this Agreement.
9. "Officer" shall mean an officer of the Authority as defined in Article XIII.

ARTICLE IV - PARTIES TO THIS AGREEMENT

Each Party to this Agreement certifies that it intends to, and does, contract with all other Parties who are signatories to this Agreement, and any signatories that may sign this Agreement in the future, pursuant to Article XVI. The withdrawal of any Party to this Agreement shall not affect this Agreement as respects the remaining Parties and those remaining Parties' intent to be bound by this Agreement.

ARTICLE V - TERM OF AGREEMENT

As authorized by Government Code Section 6510, this Agreement was effective from May 1, 1987 and shall stay in full force, as is, as amended on May 1, 2012 or any other subsequent amendments, until terminated in accordance with Article XX.

ARTICLE VI - POWERS OF THE AUTHORITY

The powers of the Authority shall be the powers enjoyed by the County of Nevada or, if the County of Nevada is no longer a Party to this Agreement then, the County of Siskiyou, and is authorized to do all acts necessary to fulfill the purposes of this Agreement including, but not limited to, the following:

1. Make and enter into contracts;
2. Incur debts, liabilities and obligations, but no debt, liability or obligation of the Authority is the debt, liability or obligation of any Party except as otherwise provided;
3. Acquire, hold or dispose of real and personal property;
4. Receive contributions and donations of property, funds, services and other forms of assistance from any source;
5. Assess Parties as deemed appropriate by the Board;
6. Sue and be sued in its own name;
7. Acquire, construct, manage and maintain buildings; and
8. Lease real or personal property including property of a Party, and receive, collect, invest and disburse monies.

These powers shall be executed in a manner provided by appropriate law and as set forth in this Agreement.

ARTICLE VII - GOVERNING DOCUMENTS

The Board of Directors shall adopt Bylaws consistent with this Agreement and applicable law to govern the operations of the Authority. The Board of Directors may adopt Coverage Program Documents, consistent with this Agreement and the Bylaws. These Coverage Program Documents define the Coverage Programs, the Members rights and duties, the Authority's rights and duties, and the operations of the programs. The Board may also adopt policies and procedures, consistent with this Agreement, the Bylaws, or Coverage Program Documents, to assist in the governance of the Authority's operations and activities. The Agreement, the Bylaws, Coverage Program Documents and policies and procedures adopted by the Board shall constitute the Governing Documents of the Authority.

Unless otherwise stated, a Governing Document may be amended by a majority of the Board of Directors at a duly noticed regular or special Board meeting.

ARTICLE VIII - RESPONSIBILITIES OF THE PARTIES

The Parties to this Agreement shall have the following responsibilities:

1. To abide by the terms of this Agreement and other Governing Documents;
2. To cooperate fully with the Authority in the settlement of claims;
3. To pay Contributions, assessments, or other charges promptly to the Authority when due; and
4. To appoint a Director and an Alternate to the Board of Directors and to reappoint those positions upon the departure of anyone from those positions.

ARTICLE IX - POWERS RESERVED UNTO THE PARTIES

The Parties reserve unto themselves the following powers:

1. To amend this Agreement;
2. Appoint the Representatives and Alternates to the Board of Directors; and
3. To terminate the Authority in accordance with Article XX.

ARTICLE X - BOARD OF DIRECTORS

There shall be a Board of Directors to govern the affairs of the Authority. The Board of Directors shall have all the powers of the Authority except those specifically reserved to the Parties. The Board of Directors shall have the authority to create committees as deemed necessary for the operations of the Authority. The Board has the power to delegate any and all of its powers, not specifically reserved exclusively to the Board, to a committee or an Officer of the Authority.

The Board of Directors shall consist of one Director and one Alternate from each Party to this Agreement. The Party shall appoint by official action an officer or employee of the Party to be the Director and such appointment shall remain in effect until such time as the Party appoints another to be the Director. The Party shall appoint by official action an officer or employee of the Party to be the Alternate and such appointment shall remain in effect until such time as the Party appoints another to be the Alternate. Each Director shall have one vote, and each Alternate shall have one vote only if the Director for which he/she is an Alternate is absent from the meeting.

ARTICLE XI - DUTIES OF THE BOARD NOT DELEGABLE

The Board may not delegate to any committee, office or person the authority to:

1. Adopt, amend or alter the Bylaws;
2. Adopt the Authority's Annual Budget;
3. Create a Coverage Program;
4. Accept a Party to this Agreement; or
5. Expel a Party to this Agreement.

ARTICLE XII - BOARD MEETINGS AND RECORDS

The Board of Directors shall hold at least one meeting each fiscal year. Regular and special meetings may be called in accordance with the Bylaws of this Authority and applicable laws. All meetings shall be open to the public except as permitted by Government Code Section 54950 et seq. The Secretary shall keep full and complete minutes of all Board meetings.

ARTICLE XIII - OFFICERS OF THE AUTHORITY

The Board shall elect one of its members as Chairperson and one as Vice Chairperson. The Board shall appoint a Secretary. The duties of the Chairperson, Vice Chairperson and Secretary shall be defined in the Bylaws.

In lieu of the designation of a treasurer and auditor as per Government Code Section 6505.6, the Board shall elect a Treasurer, who shall have, among other duties defined in the Bylaws, the duties of the treasurer and auditor as described in Government Code Section 6505.5.

The Board may appoint other officers of the Authority as described in the Bylaws.

ARTICLE XIV - ANNUAL BUDGET

Pursuant to Government Code Section 6508, the Board shall approve a budget for any given fiscal year prior to the inception of that year.

ARTICLE XV - ADMINISTRATION OF FUNDS

The Authority shall be responsible for the strict accountability of all funds and reports of all receipts and disbursements in conformity with Government Code Section 6505. All funds of the Authority may be held in common although there shall be a separate accounting for funds of each Coverage Program.

ARTICLE XVI - NEW PARTIES

Prospective Parties may apply to the Board of Directors at any time. The Board shall have the power to accept a prospective Party, after reviewing their application, with at least two-thirds affirmative vote of the entire Board. The membership shall become effective upon the Board's approval and the signing of this Agreement, participation in all mandatory Coverage Programs, and compliance with any and all other requirements imposed upon membership by the Bylaws or other Governing Documents.

ARTICLE XVII - WITHDRAWAL

A Party to this Agreement may not withdraw as a party to this Agreement prior to being a Party for at least three full fiscal years. A Party, who has been a Party for at least three full fiscal years, may withdraw from this Agreement only on the completion of a fiscal year. The Party must provide the Chairperson written notice of intent to withdraw at least six-months prior to withdrawal. The Party may rescind its notice of intent to withdraw at any time prior to ninety-days prior to the commencement of the next fiscal year. The Board may authorize rescission of the intent to withdraw upon a Party's request pursuant to the Bylaws at any time.

ARTICLE XVIII - EXPULSION

The Authority may expel a Party to this Agreement as a Party by a three-fourth vote of the entire Board. The Party shall be given written notice of such action of the Board at least ninety-days prior to the expulsion.

ARTICLE XIX - EFFECT OF EXPULSION OR WITHDRAWAL

Pursuant to Government Code Section 6512.2, termination of any Party to this Agreement as a Party shall not be construed to be completion of the purpose of the Agreement and shall not require the return of any Contributions, payments or advances made by the Party until the Agreement is rescinded or terminated by all Parties in accordance with Article XX.

Termination of a Party to this Agreement as a Party shall not terminate its continuing responsibilities defined in any Governing Document or Coverage Program Document for the period of time in which the Party participated, including, but not limited to:

1. Cooperate fully with the Authority in the investigation and settlement of a claim;
2. Pay any Contributions, retentions or deductibles, assessments or other charges which are due and payable; and
3. Provide any statistical or loss experience data and other information as may be necessary for the Authority to carry out the purpose of this Agreement.

ARTICLE XX - TERMINATION AND DISTRIBUTION

This Agreement may be terminated at any time with written consent of three-fourths of the Parties; provided, however, that this Agreement and the Authority shall exist for the purpose of disposing of all claims, distribution of assets and any other functions necessary to wind up the affairs of the Authority. The Board shall be vested with all the powers of the Authority for the purposes of winding down and dissolving the business affairs of the Authority, including the power to assess past and present Parties in accordance with Coverage Program Documents.

In accordance with Government Code Section 6512, all assets of the Authority shall be distributed among those who were Parties within ten years of termination, in proportion to the Parties' Contributions. The Board shall determine when claims and liabilities are sufficiently realized as to not jeopardize the payment of any claim or liability that may arise in the future.

ARTICLE XXI - LIABILITY AND INDEMNIFICATION

Pursuant to Government Code Section 6508.1, the debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of any Party, except to the extent and in the proportions, imposed by the Bylaws or other Governing Documents. Each Party is independent of every other Party and of the Authority and not the agent of any Party or of the Authority. In contemplation of the provisions of Section 895.2 of the California Government Code, imposing certain tort liability jointly

upon public entities, solely by reason of a joint powers agreement as defined in Section 895 of that code, each Party, as between each other, pursuant to the authorization contained in Section 895.4 and 895.6 of that code, does hereby assume the full liability imposed upon it, or any of its officers, agents, or employees by law for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, to the same extent that such liability would be imposed in the absence of Section 895.2 of the California Government Code. To achieve the above-stated purpose, each Party shall indemnify and hold harmless each other Party for any loss, costs, or expense that may be imposed upon such other Party solely by virtue of Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part of this Agreement as if set forth fully in this Agreement.

The members of the Board of Directors and the Officers and employees of the Authority shall act in good faith and in the best interests of the Authority in the performance of their duties. The members of the Board of Directors and Officers and employees shall be liable for an act or omission within the scope of their employment with the Authority as a public entity only in the event that they act or fail to act because of actual fraud, corruption, or malice. No member shall be liable for any actions taken or omissions by another member of the Board. Funds of the Authority shall be used to defend and indemnify members of the Board, Officers, and employees for any act or omission pursuant to the provisions of the Government Code Section 910 to 996.6, inclusive. The Authority may purchase insurance covering acts or omissions of the Board of Directors, Officers, and employees.

ARTICLE XXII - NOTICES

Notices to any or all Parties shall be sufficient if mailed to their respective addresses on file with the Authority. Notice to the Authority shall be sufficient if mailed to the official address of the Authority as established by Resolution.

ARTICLE XXIII - PROHIBITION AGAINST ASSIGNMENT

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

ARTICLE XXIV - ARBITRATION

Any controversy between the Parties hereto arising out of this Agreement shall be submitted to arbitration, and such arbitration shall comply with and be governed by the provisions of the California Arbitration Act, Sections 1280 through 1294.2 of the California Code of Civil Procedure.

ARTICLE XXV - AMENDMENTS

This Agreement may be amended at any time by approval of three-fourths of the Parties.

ARTICLE XXVI - AGREEMENT COMPLETE

The foregoing constitutes the full and complete agreement of the Parties. There are no oral understandings or agreements not set forth in writing herein.

In Witness Whereof, the undersigned Party hereto has executed this Agreement on the date indicated below:

Date: _____

By: _____
Printed Name of Authorized Signor

_____
Signature of Authorized Signor

_____
Title of Authorized Signor

_____
Name of Agency

California Transit Systems Joint Powers Authority

Comparison of JPA Agreements – Current versus Proposed

Current to Proposed:

Current JPA Reference	Changes in Proposed JPA	Proposed JPA Reference
Page 1, Line 6	References parties to the contract as "Properties". This reference has been eliminated.	
Page 1, Lines 11 - 12	Current JPA references Government Code §6502 allowing joint powers agreements. The Proposed JPA references §6500 et seq.	Page 1, Lines 7 - 9
Page 1, Lines 14 - 21	Reference to Government Code §990.4 and §990.8 has been eliminated to recognize the JPA's broader purpose of self-insurance and group purchase beyond just public liability.	Page 1, Lines 11 - 18
Page 1, Line 35	The Proposed JPA eliminates the definition of "Associate Member" because there are no provisions for associate members.	
Page 1, Line 38	The Proposed JPA deletes the word "insurance" from the definition of Authority to emphasize the fact that it is not insurance.	Page 2, Line 9
Page 1, Line 41	The Board of Directors definition was not changed.	Page 2, Line 10
Page 1, Line 43	The Proposed JPA eliminates the definition of "Claim". The word is not used in the document.	
Page 2, Line 1	The Proposed JPA defines "contributions" broader by stating it is all payments excluding amounts within the SIR, interest or penalties paid. This eliminates the monies paid by Program I members for losses within their SIR.	Page 2, Lines 17 - 19
Page 2, Line 4	The Proposed JPA eliminates the definition of "Cost Allocation Plan". The word is not used in the document.	
Page 2, Line 8	The Proposed JPA eliminates the definition of "Deposit". The word is not used in the document.	
Page 2, Line 11	The Proposed JPA eliminates the definition of "Excess Insurance". The word is used in the document in generic terms only.	
Page 2, Line 15	The Proposed JPA eliminates the definition of "Executive Committee". The requirement for an executive committee in the Proposed JPA has been eliminated. The Board is allowed to establish committees.	Page 4, Lines 12 -14
Page 2, Line 18	The Proposed JPA eliminates the definition of "Fiscal Year". The word is not used in the document. "Fiscal Year" is defined in the Bylaws.	
Page 2, Line 21	The Proposed JPA has changed the definition of "Joint Protection Program" by re-labeling it to a "Coverage Program", a more recognizable term in the industry.	Page 2, Lines 11-13
Page 2, Line 24	The Proposed JPA eliminates the definition of "Non-participating Property". The word is not used in the document.	

Current JPA Reference	Changes in Proposed JPA	Proposed JPA Reference
Page 2, Lines 27 - 42	The Proposed JPA has eliminated the use of the word "Properties" and its definition. "Parties" are used in place of the word "Properties" and the limitation to transportation activities will be addressed in the coverage programs. The reference to San Diego Transportation Company has been eliminated.	Page 2, Line 24
Page 2, Line 44	The Proposed JPA eliminates the definition of "Retrospective Adjustment". The word is not used in the document.	
Page 3, Lines 2 - 19	The Article of the Proposed JPA titled "Purpose" is more general than the Current JPA. It does not reference or limit to liabilities incurred under Government Code §990 et seq., but is broader to include property, workers' compensation and even employee benefits.	Page 1, Lines 33 - 45
Page 3, Lines 22 - 28	The "Parties to the Agreement" are essentially unchanged.	Page 2, Line 27 - 32
Page 3, Lines 31 - 35	The Proposed JPA states the day upon commencement of the contract and states termination upon the conditions stated in the "Termination" provision. It also references Government Code §6510 that allows the contract to be ongoing until such time. The original JPA only reference commencement upon two properties signing.	Page 2, Lines 34 -38
Page 4, Lines 2 - 6	The "Creation of Authority" Article is essentially unchanged except as respects the name. The word "insurance" was deleted from the name.	Page 2, Lines 1-5
Page 4, Lines 9 - 34	The Article titled "Powers of Authority" is essentially unchanged in the Proposed JPA except that the Proposed JPA makes it clear that the Authority has the power to assess its members.	Page 3, Lines 1 - 19
Page 4, Line 37 - Page 5, Line 21	The "Responsibilities of the Authority" have been eliminated in the Proposed JPA. This will be left to the Bylaws and the Board to define.	
Page 5, Line 26 – Page 6, Line 11	The Article titled "Responsibilities of the Properties" has been amended by eliminating the required appointment of one to be responsible for risk management. This can be addressed in the Bylaws. The Proposed JPA requires the Parties to abide by the Governing Documents.	Page 3, Lines 36 - 44
Page 5, Line 35	The Proposed JPA also eliminated the requirement that a Party appoint a safety officer or committee. This can be addressed in the Bylaws. The Proposed JPA requires the Parties to abide by the Governing Documents.	Page 3, Lines 36 - 44
Page 5, Line 38	The Proposed JPA eliminates the requirement upon the Properties to maintain records. The records requirements will be addressed in the Coverage Program Documents.	

Current JPA Reference	Changes in Proposed JPA	Proposed JPA Reference
Page 5, Line 42 - Page 6, Line 2	The exact days for payment of invoices is not stated in the Proposed JPA but rather states that they will be paid timely. It also opens the requirement to pay timely to any charge made against the member. Thus, invoices for reimbursement of Self-insured retentions will also be required to be paid promptly. The time of payment can be addressed in the Coverage Programs or the Bylaws.	Page 3, Line 42
Page 6, Line 8	The Proposed JPA requires the members to abide by the Bylaws, etc. as does the current JPA. But the Proposed JPA refers to those documents as the "governing documents".	Page 3, Line 40
Page 6,Line 17 – 18	The Board appointment and duty to govern are the same.	Page 4, Lines 17 - 23
Page 6, Lines 31 - 33	The Proposed JPA does not include cause for appointing a new Director if the Director has missed two consecutive meetings. The appointing Party needs no reason for appointing a new director.	
Page 6, Lines 35 - 42	The Proposed JPA has no provisions for a director or alternate of an associate member. Reference to associate member deleted.	
Page 7, Lines 6 - 11	The Proposed JPA does not specifically address an Executive Committee. The Board has the right to establish committees, including an Executive Committee, either in the Bylaws or by Board action.	Page 4, Lines 12 - 14
Page 7, Line 13 - 43	The Proposed JPA does not specifically state authorities and functions of the Board in detail. Rather it merely states the Board shall govern the affairs of the Authority and shall have the powers of the Authority.	Page 4, Lines 11 - 15
Page 8, Line 8	The Proposed JPA requires the Secretary to keep the minutes of the meetings. The current JPA requires the Board to keep the minutes and distribute to each Property. The Proposed Bylaws will address the distribution of the minutes.	Page 4, Lines 37 - 40
Page 8, Lines 12 - 15	The Proposed JPA is silent as to what constitutes a quorum for the Board. The default of a majority is controlling.	
Page 8, Line 24 – Page 9, Line 13	The Proposed JPA does not include any of the details for an Executive Committee, leaving the Board to decide whether an Executive Committee is needed and how it is to be structured.	
Page 9, Lines 15 - 18	The Proposed JPA does not have a separate section for Joint Protection Programs and does not require them to be specified in the Bylaws. Rather the Proposed JPA provides the Board with the power to create "Coverage Programs" and define them in whatever document is appropriate. Note, however, that the Proposed JPA does not allow the Board to delegate the authority to make programs.	Page 4, Line 31
Page 9, Lines 23 - 24	The Proposed JPA requires the budget to be adopted prior to the fiscal year, a little more precise than the Current JPA.	Page 5, Lines 15 - 16

Current JPA Reference	Changes in Proposed JPA	Proposed JPA Reference
Page 9, Lines 26 - 36	The Proposed JPA only refers to the Treasurer's responsibilities under Government Code Section 6505.5. This section essentially requires the Treasurer to provide all that is in the Current JPA.	Page 5, Lines 7 - 9
Page 9, Line 38 – Page 10, Line 3	The Proposed JPA does not specifically require the Board to have an audit by a CPA. However, the duties of the Treasurer per Section 65050.6, requires the Treasurer to have an audit prepared.	Page 5, Lines 7 - 9
Page 10, Lines 5 - 7	The Proposed JPA does not require a claims audit. A claims audit is specific to a Coverage Program and anticipated to be included in the documentation of such program.	
Page 10, Line 10 - 20	Strict accountability is required under the Proposed JPA as well as the current JPA. However, the Proposed JPA does not require the accounting to be on a full accrual basis.	Page 5, Lines 20 - 22
Page 10, Lines 22 - 24	The Proposed JPA does not comment on the Deposit but leaves that to be stated in the coverage program documents and the Bylaws as appropriate.	
Page 10, Lines 27 – 30	The Proposed JPA does not specifically discuss a Retrospective Adjustment but anticipates this will be addressed in each coverage program.	
Page 10, Line 33 - 40	The Proposed New Parties section does not specifically require payment of a deposit but by requiring the new member to meet all the requirements of the governing documents essentially imposes the same. The Proposed JPA does not specifically give the Board the option of applying additional terms and conditions. But their vote can be so phrased.	Page 5, Lines 26 - 30
Page 11, Line 13 - 18	The Proposed JPA does not provide for a $25,000 non-refundable deposit.	
Page 11, Line 23 - 28	The Proposed JPA does not provide for a member to drop out if the premium is higher than the estimated. The Coverage Program documents can address excessive costs.	
Page 11, Line 36 - 40	The Proposed JPA requires six months notice of withdrawal from the JPA. If the party wants to rescind that notice of withdrawal, it may do so up to 90 days prior to the date of withdrawal. The current JPA required confirmation of the intent to withdraw 90 days before the effective withdrawal. The three year initial requirement is not changed.	Page 5, Lines 34 - 40
Page 12, Lines 2 - 8	The Proposed JPA does not have a similar Cancellation provision because the ability to cancel ones participation in a specific program is expected to be defined in the coverage program documents. The provisions may vary depending upon the program and whether participation in such program is mandatory or voluntary.	
Page 12, Lines 13 - 16	The Proposed JPA, as does the Current JPA, states that the termination by one party does not terminate the contract as respects the other parties.	Page 6, Lines 9 - 12 and Lines 14 -22

Current JPA Reference	Changes in Proposed JPA	Proposed JPA Reference
Page 12, Lines 18 - 25	The Proposed JPA does not specifically state that a withdrawal does not affect its continuing obligation to a Joint Protection Program. Rather it anticipates this to be addressed in the program documents to which the party has agreed in the JPA to be bound.	Page 6, Lines 14 -23
Page 12, Line 30 - Page 13, Line 2	The Proposed JPA provides for the runoff and provides the Board with the same powers during Termination of the Agreement as the Current JPA.	Page 6, Lines 26 -31
Page 13, Line 9 - 11	Upon termination, the current Agreement requires the Board to distribute any assets to all past and present members within six months of the close of the last claim covered by the Joint Protection Plan. The Proposed JPA leaves it up to the Board to determine when to distribute the funds. But the funds are only distributed to those a party to the agreement within 10 years of termination. Note little funds will be distributed this way because the programs will distribute most of the funds through the retrospective adjustments.	Page 6, Lines 33 - 36
Page 13, Lines 14 - 18	The Proposed JPA does not require the Board to adopt Bylaws but merely provides the Board the authority to adopt Bylaws.	Page 4, Line 29
Page 13, Lines 21 - 37	Indemnification of parties is in essence the same in both the Proposed and Current JPA's.	Page 6, Lines 40 - 44 and Page 7, Lines 1 - 19
Page 14, Lines 2 - 6	The Notice provisions of both JPA's are essentially the same.	Page 7, Lines 23 - 25
Page 14, Lines 9 - 12	The three-fourths approval requirement for amendments to the JPA remains in the Proposed JPA.	Page 7, Line 41
Page 14, Lines 15 - 19	Prohibition against assignment exists in both JPA's.	Page 7, Lines 29 - 31
Page 14, Lines 22 - 25	Agreement Complete exists in both JPA's	Page 8, Lines 3 - 4

New Provisions in Proposed JPA:

Proposed JPA Reference	Additional Provisions Not in Current JPA
Page 2 Lines 11 - 13	Definition of Coverage Program rather than Protection Program
Page 2, Lines 20 - 21	Definition of Governing Documents is added.
Page 2, Lines 22 - 23	Definition of member is added.
Page 2, Line 25	Definition of Officer is added.
Page 3, Lines 24 - 31	Defines Governing Documents and establishes a priority of the documents.
Page 4, Lines 3 - 7	A section was added reserving certain powers to the parties.
Page 4, Lines 27 - 33	A section was added forbidding delegation of certain duties by the Board.
Page 6, Line 18	The proposed JPA adds a duty of a withdrawn or expelled member to cooperate in the investigation of claims.
Page 7, Lines 15 - 19	The proposed JPA includes a provision whereby the Authority will defend and indemnify the Board and the Officers of the Authority. This essentially bypasses any terms and conditions in a coverage document as well as eliminate the member's SIR should the coverage come back through an E&O of the member.

JOINT POWERS AGREEMENT
CREATING
CALIFORNIA TRANSIT SYSTEMS
JOINT POWERS INSURANCE AUTHORITY

ORIGINAL EXECUTION COUNTERPART

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ORIGINAL EXECUTION COUNTERPART

JOINT POWERS AGREEMENT
CALIFORNIA TRANSIT SYSTEMS
JOINT POWERS INSURANCE AUTHORITY

THIS AGREEMENT is made and entered into in the County of Sacramento, State of California, by and among the California public agencies (referred to as "Properties" or as "Property"), which have become parties to this agreement by executing a counterpart of it.

RECITALS

WHEREAS, California Government Code Section 6502 provides that two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, California Government Code Section 990.4 provides that a local public entity may self-insure, purchase insurance through an authorized carrier, or purchase insurance through a surplus line broker, or any combination of these; and

WHEREAS, California Government Code Section 990.8 provides that two or more local public entities may, by a joint powers agreement, provide insurance for any purpose by any one or more of the methods specified in Government Code Section 990.4; and

WHEREAS, each Property desires to join together with the other Properties for the purpose of a Joint Protection Program, as defined in this agreement; and

WHEREAS, it appears economically feasible and practical for the Properties to do so;

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

ARTICLE 1

DEFINITIONS

The following definitions shall apply to the provisions of this agreement:

(a) "Associate Member" shall mean a California nonprofit corporation which operates a fixed route public transportation service.

(b) "Authority" shall mean the California Transit Systems Joint Powers Insurance Authority created by this agreement.

(c) "Board of Directors" or "Board" shall mean the governing body of the Authority.

(d) "Claim" shall mean a demand made against a Property which is within the Authority's Joint Protection Program as developed by the Board of Directors.

(e) "Contribution" shall mean the sum of a Property's Deposit and additional assessments determined by the Cost Allocation Plan for a fiscal year.

(f) "Cost Allocation Plan" shall mean the formula, adopted by the Board, to allocate the costs of losses, expenses and Contributions to a catastrophic fund or other reserve, to individual Properties.

(g) "Deposit" shall mean the amount determined by the Board annually, as necessary to fund the Joint Protection Program of the Authority.

(h) "Excess Insurance" shall mean that insurance which may be purchased by or on behalf of the Authority to protect the Properties against catastrophic losses or an unusual frequency of losses during a single year.

(i) "Executive Committee" shall mean the Executive Committee of the Board of Directors of the Authority.

(j) "Fiscal Year" shall mean that period of twelve months which is established as the fiscal year of the Authority by the Board of Directors.

(k) "Joint Protection Program" shall mean and include a program or programs of self-insurance or commercial insurance, or Excess Insurance, or both.

(l) "Non-participating Property" shall mean, in regards to a specific Joint Protection Program, a Property which is not participating in that Joint Protection Program.

(m) "Property" or "Properties" shall mean those public agencies organized and existing under the laws of California and empowered by law to provide public transportation service, including but not limited to transportation districts, cities, counties, and other local or regional governmental entities, which have executed this agreement. Public transportation service includes but is not limited to transportation services of all kinds, including service for the elderly and handicapped. The Authority may establish Associate Members, by separate agreement with the Authority, upon approval of the Board of Directors, provided that any prospective Associate Member shall not affect the financing capabilities or other powers of the Authority. An Associate Member which executes such agreement with the Authority shall be deemed to be included within the term Property except as otherwise provided in this agreement. An Associate Member shall not be considered a party to this agreement within the meaning of the provisions of California Government Code Section 6500 and following. An Associate Member shall have all of the responsibilities and obligations of a Property as provided in this agreement. The Properties hereby agree that the Long Beach Public Transportation Company and the San Diego Transit Corporation may become Associate Members by executing this agreement.

(n) "Retrospective Adjustment" shall mean the amount, determined by the Cost Allocation Plan adopted by the Board of Directors, as a Property's share of losses, expenses, and Contribution to a catastrophe fund or other reserve.

ARTICLE 2

PURPOSES

This Agreement is entered into by the Properties pursuant to the provisions of California Government Code Sections 990, 990.4, 990.8 and 6500 et seq. in order to provide comprehensive and economical public liability, workers' compensation, and property coverage, or coverage for other risks which the Board of Directors may include in a Joint Protection Program. Additional purposes of this agreement are to reduce the amount and frequency of losses and decrease the cost incurred by Properties in handling and litigating claims. These purposes shall be accomplished through the exercise of the powers of the Properties jointly in the creation of a separate entity, the California Transit Systems Joint Powers Insurance Authority, to administer Joint Protection Programs for the Properties, to pool their losses and Claims, jointly purchase commercial and Excess Insurance and administrative and other services, including claims adjusting, data processing, risk management consulting, loss prevention, legal, and related services.

It is also the purpose of this agreement to provide, to the extent permitted by law, for the inclusion at a subsequent date of such additional public agencies as may desire to execute this agreement and become Properties, subject to approval by the Board of Directors.

ARTICLE 3

PARTIES TO AGREEMENT

Each Property certifies that it intends to and does contract with all other Properties and, in addition, with such other parties as may later be added as Properties pursuant to Article 21. Each Property also certifies that the deletion of any party from this agreement pursuant to Articles 22 and 23 shall not affect this agreement or such Property's intent to contract with the Properties then remaining.

ARTICLE 4

TERM OF AGREEMENT

This agreement shall become effective of the date of execution by the second of two Properties and shall continue until and unless terminated as hereinafter provided. This agreement may be executed in counterparts.

ARTICLE 5

CREATION OF AUTHORITY

Pursuant to Section 6500 et seq. of the California Government Code, there is hereby created a public entity separate and apart from the parties hereto, to be known as the California Transit Systems Joint Powers Insurance Authority.

ARTICLE 6

POWERS OF AUTHORITY

The Authority shall have the powers common to the Properties and is hereby authorized to do all acts necessary for the exercise of those common powers, including, but not limited to, any or all of the following:

(a) To make and enter into contracts;

(b) To incur debts, liabilities or obligations, to issue bonds, notes, or other evidences of indebtedness, and make and enter into contracts and other instruments for the issuance and sale of certificates of participation to fund the purposes of this agreement and to secure the performance of related agreements, including reinsurance contracts and credit facilities;

(c) To acquire, receive, hold or dispose of property, Contribution and donations of property, funds, services and other forms of assistance from persons, firms, corporations and governmental entities;

(d) To sue and be sued in its own name; and

(e) To exercise all powers necessary and proper to carry out the terms and provisions of this agreement, or otherwise authorized by law.

The powers of the Authority shall be exercised pursuant to the terms of this agreement and in the manner provided by law. To comply with the provisions of Section 6509 of the California Government Code, the manner of exercising any power shall be subject only to the similar restrictions on the exercise of the powers of Central Contra Costa Transit Authority.

ARTICLE 7

RESPONSIBILITIES OF THE AUTHORITY

The Authority shall perform the following functions in discharging its responsibilities under this agreement:

(a) Provide Joint Protection Programs by negotiation or bid, and purchase, as determined necessary by the Board of Directors.

(b) Assist each Property's designated risk manager with the implementation of risk management functions relating to risks within the Property covered by the Joint Protection Program.

(c) Provide claims adjusting and subrogation services for Claims covered by the Joint Protection Program.

(d) Provide loss analysis and control services by the use of statistical analysis, data processing, and record and file keeping services, in order to identify high exposure operations and to evaluate proper levels of self-retention and deductibles.

(e) Conduct risk management audits to review the participation of each Property in the Joint Protection Program as deemed necessary by the Board of Directors.

(f) Such other responsibilities as deemed necessary by the Board of Directors.

(g) Issue Procedures Manual.

ARTICLE 8

RESPONSIBILITIES OF PROPERTIES

Properties shall have the following responsibilities:

(a) The governing body of each Property shall appoint a Director and at least one alternate Director to the Board of Directors, pursuant to Article 9 of this agreement.

(b) Each Property shall appoint an employee of the Property to be responsible for the risk management function within that Property and to serve as a liaison between the Property and the Authority as to risk management.

(c) Each Property shall maintain an active safety officer or safety committee, or both, and shall consider all recommendations of the Authority concerning unsafe practices.

(d) Each Property shall maintain a set of records, including a loss log, in all categories of risk covered by the Joint Protection Program, to insure the accuracy of the Authority's loss reporting system, until no longer deemed necessary by the Board of Directors.

(e) Each Property shall pay its Contribution, including any Retrospective Adjustment, within thirty (30) days of the invoice date. After withdrawal or termination, each Property shall pay promptly to the Authority its share of any additional Contribution, when and if required of it by the Board of Directors under Article 23 or 24 of this agreement.

The Board has the authority to assess interest or late penalties for payment of money in arrears, such as for overdue Contributions.

(f) Each Property shall 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.

(g) Each Property shall in any and all ways cooperate with and assist the Authority, and any insurer of the Authority, in all matters relating to this agreement, the Joint Protection Program, and covered Claims and will comply with all bylaws, rules and regulations adopted by the Board of Directors.

ARTICLE 9

BOARD OF DIRECTORS

(a) The Authority shall be governed by the Board of Directors which is hereby established and which shall be composed of one representative from each Property. Each Property, by official action, shall appoint a Director of the Board and an alternate Director, each of whom shall be an officer or employee of that Property. The alternate appointed by a Property shall have the authority to attend, participate in and vote at any meeting of the Board when the regular Director for whom he or she is an alternate is absent from said meeting.

(b) Each Director or alternate of the Board shall serve until a successor is appointed. Each Director or alternate shall serve at the pleasure of the Property by which he or she has been appointed.

(c) Each Director or alternate shall have one vote. Directors or their alternates may not vote on issues concerning a Joint Protection Program for which the entity is a Non-Participating Property.

(d) The unexcused absence of a Director or alternate from two consecutive meetings of the Board shall be cause for the appointment of a new Director by the governing body of the appointing Property.

(e) The Director and alternate Director of an Associate Member shall be entitled to notice of all meetings of the Board of Directors and may attend and participate in any meeting of the Board, but may vote only on matters relating to a Joint Protection Program, as provided in such program or in the bylaws adopted by the Board of Directors. The Director and alternate Director of an Associate Member shall not be regarded as members of the governing body of the Authority or officers of the Authority; provided, however, that they shall comply with the Political Reform Act of 1974 and the Conflict of Interest Code adopted by the Board of Directors.

ARTICLE 10

POWERS OF THE BOARD OF DIRECTORS

The Board of Directors shall have the following powers and functions:

(a) To elect an Executive Committee from its Directors pursuant to Article 12 of this agreement.

(b) To review all acts of the Executive Committee and to modify or override any decision or action of the Executive Committee upon a majority vote of the entire Board of Directors.

(c) To receive and review periodic accountings of all funds and audits under Article 16 of this agreement.

(d) To conduct on behalf of the Authority all businesses of the Authority which the Authority may conduct under the provisions of this agreement and pursuant to law.

(e) To determine details of, select, and establish the Joint Protection Programs of the Authority.

(f) To determine and purchase all commercial insurance, including Excess Insurance, necessary to carry out the Joint Protection Programs of the Authority.

(g) To contract for or develop various services for the Authority, including, but not limited to, claims adjusting, loss control and risk management consulting.

(h) To cause to be prepared the operating budget of the Authority for each fiscal year.

(i) To receive and act upon reports of the Underwriting Committee, Claims Committee, Investment Committee, and other committees as may be created by action of the Board.

(j) To hire persons or entities as the Board deems necessary for the administration of the Authority and to exercise general supervisory and policy control over such persons or entities.

(k) To establish or appoint such offices, officers, and committees of the Board as deemed necessary; provided, however, that the Board shall appoint a Treasurer and Auditor or Controller, who may be the same person, as officers of the Authority.

(l) Such other powers and functions as are provided for in this agreement or in the bylaws.

ARTICLE 11

MEETING OF THE BOARD OF DIRECTORS

(a) Meetings. The Board shall provide for its regular, adjourned regular and special meetings or upon call of the chairperson of the Board; provided, however, that it shall hold at least one regular meeting annually as set forth in the bylaws.

(b) Minutes. The board shall cause minutes of regular, adjourned regular and special meetings to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Property.

(c) Quorum. A majority of the Directors of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time. A vote of the majority of those Directors present at a meeting shall be sufficient to take action by the Board, except as otherwise specifically set forth in this agreement or in the bylaws.

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

ARTICLE 12

EXECUTIVE COMMITTEE

The Board of Directors may establish and appoint an Executive Committee.

(a) The Executive Committee, if established, may consist of up to 25 members. Officers of the Executive Committee shall be the Chairperson, Vice Chairperson, Secretary, and the Treasurer of the Board of Directors.

(b) The Chairperson of the Authority, or the Vice Chairperson in his or her absence, shall serve as the Chairperson of the Executive Committee.

(c) The unexcused absence of a member of the Executive Committee from two consecutive meetings shall be cause for the removal of said member and appointment of a new member to the Executive Committee.

(d) Vacancies on the Executive Committee shall be filled as provided in the bylaws.

(e) Alternate Directors may be members of the Executive Committee.

ARTICLE 13

DELEGATION OF POWERS TO THE EXECUTIVE COMMITTEE

The Board may delegate any of its powers to the Executive Committee, except those powers described in Articles 10(a), 10(b) and 10 (k).

ARTICLE 14

MEETINGS OF THE EXECUTIVE COMMITTEE

The meetings of the Executive Committee, if established by the Board of Directors, shall be held and conducted as provided in the bylaws. The Executive Committee shall make periodic reports to the Board of Directors, advising the Board of its decisions and activities.

ARTICLE 15

JOINT PROTECTION PROGRAM COVERAGE

The coverage of the Joint Protection Program provided by the Authority shall be specified in the bylaws.

ARTICLE 16

ACCOUNTS, RECORDS AND AUDITS

(a) Annual Budget. The Authority shall annually adopt an operating budget, pursuant to Article 10 (h) of this agreement.

(b) Funds and accounts. The Treasurer of the Authority shall be the custodian of the property and money of the Authority and shall establish and maintain such funds and accounts as required by the Board and as required by good accounting practice. The Treasurer shall file an official bond in an amount to be fixed by the Board of Directors, unless otherwise fixed by the Properties. Books and records of the Authority in the hands of the Treasurer shall be open to any inspection at all reasonable times by authorized representatives of Properties and as otherwise required by law.

(c) Treasurer's Report. The Treasurer shall make the reports required by law, and within 120 days after the close of each fiscal year, the Treasurer shall give a complete written report of all financial activities for such fiscal year to the Board and to each Property.

(d) Financial Audit. The Board shall cause an annual financial audit to be made with respect to all receipts, disbursements, or other transactions by a Certified Public Accountant. A report of such financial audit shall be filed as a public record with each of the Properties. Such

report shall be filed no later than required by law. All costs of such financial audit shall be paid by the Authority and shall be charged against the Properties in the same manner as all other administrative costs.

(e) Claims Audit. The Board shall cause a periodic audit of Claims, as deemed necessary. All costs of such Claims audit shall be paid by the Authority and shall be charged against the Properties in the same manner as all other administrative costs.

ARTICLE 17

ESTABLISHMENT AND ADMINISTRATION OF FUNDS

The Authority shall be responsible for the strict accountability of all funds and reports of all receipts and disbursements. It will comply with all provisions of law relating to the subject, particularly Section 6505 of the California Government Code. All of the funds of the Authority may be invested in common and each program year shall be accounted for separately on a full accrual basis.

The Treasurer shall receive, invest and disburse funds in accordance with the procedures established by the Board and bylaws and in conformity with applicable law.

ARTICLE 18

DEPOSIT

The Deposit for each Property shall be calculated and paid as stated in the bylaws.

ARTICLE 19

RETROSPECTIVE ADJUSTMENTS

Retrospective Adjustments to each year's Deposit shall be calculated and paid as stated in the bylaws.

ARTICLE 20

NEW MEMBERS

After the effective date of the initial Joint Protection Program is established by the Authority, additional Properties shall not be permitted to enter the Authority during the first year of operation, except that upon the three-fourths vote of the entire Board of Directors, the Board may establish a second entry date by which additional Properties may be permitted to enter the Authority upon execution of this agreement, the payment of the Deposit, as provided in this Article, and such other terms and conditions as the Board of Directors may deem necessary.

Following the first year of operation, the Authority shall allow entry into the Joint Protection Program of new Properties approved by the Board, at such times as approved by the Board. Properties entering under this Article will be required to pay their share of organizational expenses as determined by the Board, including expenses necessary to analyze their loss data and determine their Deposits.

During the Authority's first year, Properties may join the Joint Protection Program offered by the Authority after it has been established by:

(a) Executing this agreement before the effective date of the initial Joint Protection Program, and

(b) Paying to the Authority a non-refundable deposit equal to the Property's first year's estimated Deposit or $25,000, whichever is less, before the effective date of the initial Joint Protection Program.

The non-refundable deposit will be used to fund the entity's estimated Deposit if the entity becomes a participant in the Joint Protection Program.

ARTICLE 21

WITHDRAWAL

(a) A Property may withdraw as a party to this agreement any time prior to its consenting in writing to enter the Joint Protection Program.

(b) A Property whose actual Deposit exceeds one hundred ten percent (110 %) of its estimated Deposit may withdraw as a party to this agreement prior to the effective date of the Joint Protection Program.

(c) A Property which enters the Joint Protection Program may not withdraw as a party to this agreement for a three-year period commencing on the effective date of the Joint Protection Program, or commencing on the date of entry into the Joint Protection Program, or commencing on the date of entry into the Joint Protection Program for those Properties executing this agreement after the effective date of the initial Joint Protection Program.

(d) After the initial three-year noncancellable commitment to the Joint Protection Program, a Property may withdraw only at the end of any fiscal year, provided it has given the Authority a six-month written notice of its intent to withdraw from this agreement and the Joint Protection Program and a ninety (90) day final notice of intent of withdrawal from the Joint Protection Program of this agreement.

ARTICLE 22

CANCELLATION

Notwithstanding the provisions of Article 21, the Authority shall have the right to cancel any Property's participation in a Joint Protection Program upon a two-thirds vote of the entire Board of Directors. Any canceled Property shall be given a ninety day notice before such cancellation becomes effective, unless such cancellation is for non-payment of a Contribution, then ten days written notice applies.

ARTICLE 23

EFFECT OF WITHDRAWAL

(a) The withdrawal of any Property from this agreement shall not terminate this agreement and a Property by withdrawing shall not be entitled to payment or return of any Contribution, consideration or property paid, or donated by the Property to the Authority, or to any distribution of assets, except as provided in this Article and in Article 24 (c).

(b) The withdrawal or cancellation of any Property after the effective date of the Joint Protection Program shall not terminate its responsibility for Contributions to any fund or insurance

program created by the Authority until all Claims, or other unpaid liabilities, occurring or accruing during the period the Property was a party to this agreement have been finally resolved and a determination of the final amount of payments due by the Property or credits to the Property for that period has been made by the Board of Directors. In connection with its determination, the Board may exercise similar powers to those provided for in Article 24 (b) of this agreement.

ARTICLE 24

TERMINATION AND DISTRIBUTION

(a) This agreement may be terminated at any time during the first three (3) noncancellable years by the written consent of all Properties and thereafter by the consent of three-fourths of the Properties; provided, however, that this agreement and the Authority shall continue to exist for the purpose of the disposition of all Claims, distribution of assets and all other functions necessary to wind up the affairs of the Authority.

(b) The Board of Directors is vested with all powers of the Authority for the purpose of winding up and dissolving the business affairs of the Authority. These powers shall include the power to require Properties, including those which were a party at the time the Claim arose or was incurred, to pay their share of any additional amount of Contribution in accordance with loss allocation formulas for the final disposition of all claims and losses covered by the Joint Protection Program pursuant to this agreement. A Property's share of such additional

Contribution shall be determined on the same basis as that provided for Retrospective Adjustment.

(c) Upon termination of this agreement all assets of the Authority shall be distributed only among the Properties, including any of those Properties which previously withdrew pursuant to Article 21(d) or were canceled pursuant to Article 22 of this agreement, in accordance with and proportionate to their Contributions (including cash contributions and property at market value when received) in excess of the total amount of Retrospective Adjustments made during the term of this agreement. The Board of Directors shall determine such distribution within six months after disposal of the last pending Claim or loss covered by the Joint Protection Program pursuant to this agreement.

ARTICLE 25

PROVISION FOR BY-LAWS

At the first meeting of the Board of Directors, the Board shall adopt Authority bylaws to govern the day-to-day operations of the Authority. Each Property shall receive a copy of any bylaws adopted under this Article.

ARTICLE 26

LIABILITY AND INDEMNIFICATION

Pursuant to Government Code Section 6508.1, the debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligation of any Property. Each Property is independent of every other Property and of the Authority and not the agent of any Property or of the Authority. In contemplation of the provisions of Section 895.2 of the California Government Code, imposing certain tort liability jointly upon public entities, solely by reason of a joint powers agreement as defined in Section 895 of that code, each Property, as between each other, pursuant to the authorization contained in Section 895.4 and 895.6 of that code, does hereby assume the full liability imposed upon it, or any of its officers, agents, or employees by law for injury caused by a negligent or wrongful act or omission occurring in the performance of this agreement, to the same extent that such liability would be imposed in the absence of Section 895.2 of the California Government Code. To achieve the above-stated purpose, each Property shall indemnify and hold harmless each other Property for any loss, costs, or expense that may be imposed upon such other Property solely by virtue of Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part of this agreement as if set forth fully in this agreement.

ARTICLE 27

NOTICES

Notices to Properties hereunder shall be sufficient if delivered to the principal office of the respective Property. Notices to the Authority shall be sufficient if mailed to the address currently contained in the bylaws.

ARTICLE 28

AMENDMENT

This agreement may be amended at any time upon the three-fourths vote of all the Properties.

ARTICLE 29

PROHIBITION AGAINST ASSIGNMENT

No Property may assign any right, claim or interest it may have under this agreement, and no creditor, assignee or third party beneficiary of any Property shall have any right, claim or title to any part, share, interest, fund, premium or asset of the Authority.

ARTICLE 30

AGREEMENT COMPLETE

The foregoing constitutes the full and complete agreement of the Properties. There are no oral understandings or agreements not set forth in writing herein.

IN WITNESS WHEREOF, the Properties have first executed this agreement by authorized officials thereof on the dates indicated below.

RESOLUTION NO. 11-

RESOLUTION APPROVING THE AMENDED JOINT POWERS AGREEMENT FORMING THE CALIFORNIA TRANSIT SYSTEMS JOINT POWERS AUTHORITY

WHEREAS, on July 14, 1997, by its Resolution No. 97-81, the City Council approved entering into an agreement that provided for the creation of the California Transit Systems Joint Powers Insurance Authority (hereinafter CalTIP) for the purpose of jointly funding tort liabilities and other losses and providing risk management services to reduce such losses;

WHEREAS, CalTIP has provided City of Auburn coverage for such liabilities at stable and overall cost-effective pricing;

WHEREAS, the Auburn City Council finds it in the best interest of the City of Auburn to continue its participation in CalTIP and obtain liability coverage and risk management services from CalTIP;

WHEREAS, the joint powers agreement of CalTIP has retained its original form as drafted in 1987, and there have changes in laws and the operations of CalTIP since that time;

WHEREAS, the City Council recognizes these changes and the need to amend the CalTIP joint powers agreement to enable CalTIP to benefit from the changes in laws, adapt to changes in the environment that CalTIP operates, and to benefit from the developments in managerial and operational techniques of the joint powers authority for the purpose of jointly funding tort liabilities and other losses facing the parties to the agreement in the future.

NOW, THEREFORE, BE IT RESOLVED that the Auburn City Council accepts the changes to the joint powers agreement as presented, and

BE IT FURTHER RESOLVED that the City Council authorizes the Director of Public Works to sign the amended joint powers agreement that shall enable the City of Auburn to continue to enjoy the joint self-insurance and risk management programs provided by CalTIP.

DATED: October 24, 2011

_____

William W. Kirby, M.D., Mayor

ATTEST:

_____

Joseph G. R. Labrie, City Clerk

I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a regular meeting of the City Council of the City of Auburn held on the 24th of October 2011 by the following vote on roll call:

Ayes:
Noes:
Absent:

_____

Joseph G. R. Labrie, City Clerk

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