

RESOLUTION NO. 89-118

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING AMENDMENTS TO THE AGREEMENT CREATING THE
CALIFORNIA JOINT POWERS INSURANCE AUTHORITY

WHEREAS, this agency is a member entity of the California Joint Powers Insurance Authority; and

WHEREAS, at the August 17, 1989 meeting of the California Joint Powers Insurance Authority Board of Directors, the Board voted to recommend to the member entities a series of amendments to the original agreement (including changing the name of the Authority to the "California Joint Powers Risk Management Authority"); and

WHEREAS, a complete and true copy of the proposed JPA Agreement amendments recommended by the Board has been provided to this member entity; and

WHEREAS, this member entity is in accord with the proposed amendments, finds them compatible with the general purposes of the Agreement, and finds that they should be adopted;

NOW, THEREFORE, BE IT RESOLVED BY THE LODI CITY COUNCIL that this member entity hereby approves and ratifies the action taken by other member entities to make such amendments effective July 1, 1990, hereby adopts such amendments and authorizes execution on behalf of this member entity of any further instrument constituting an amendment of the Agreement, or the entire Agreement as amended, or other appropriate form of instrument tendered for signature and filing to make effective the amendments hereby adopted.

Dated: September 6, 1989

I hereby certify that Resolution No. 89-118 was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 6, 1989 by the following vote:

Ayes: Council Members - Hinchman, Olson, Pinkerton, Reid and Snider (Mayor)

Noes: Council Members - None

Absent: Council Members - None


Alice M. Reimche
City Clerk

89-118

RES89118/TXTA.02J

JOINT POWERS AGREEMENT

CREATING THE

CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

ADOPTED

JOINT POWERS AGREEMENT

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CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

JOINT POWERS AGREEMENT

This Agreement is made by and among the undersigned public entities, all of which are public entities generally organized and operating under the laws of the State of California or public entities specifically organized and operating under Section 6507 of the California Government Code and related provisions of law which authorize the creation and operation of governmental joint powers authorities under California Law.

RECITALS

- I. The following state laws, among others, authorize the Member Entities to enter into this agreement:
 - A. Labor Code Section 3700(b) allowing a local public entity to fund its own workers' compensation claims;
 - B. Government Code Sections 989 and 990, and Education Code Section 15802, permitting a local public entity to insure itself against liability and other losses;
 - C. Government Code Section 990.4 permitting a local public entity to provide insurance and self-insurance in any desired combination;
 - D. 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; and
 - E. 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.
- II. The governing board of each undersigned public entity has determined that it is in its best interest and in the public interest that this present Agreement be executed and that it

shall participate as a member of the public entity created by this Agreement.

NOW, THEREFORE, the undersigned, by, between and among themselves, in consideration of the mutual benefits, promises and agreements set forth below, hereby agree as follows:

AGREEMENT

ARTICLE I

**CREATION OF THE CALIFORNIA JOINT POWERS RISK MANAGEMENT
AUTHORITY**

Pursuant to Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500), the parties hereto hereby have created a public agency, separate and apart from the parties hereto, now to be known as the California Joint Powers Risk Management Authority, hereinafter called the Authority. This Agreement amends and supercedes the Agreement filed with the Secretary of State on April 21, 1986 entitled "Joint Powers Agreement Creating the California Joint Powers Insurance Authority".

ARTICLE II

PURPOSES

This amended Agreement is entered into by Member Entities pursuant to the provisions of California Government Code Sections 990, 990.4, 990.8, and 6500 *et seq.* in order to:

- A. Share the risk of covered losses; and

- B. Jointly purchase excess insurance and administrative and other services as determined by the Board of Directors; and
- C. Assist the Member Entities to develop and maintain risk management programs to reduce the severity and frequency of their losses.

ARTICLE III

DEFINITIONS

Unless the context otherwise requires the following terms shall be defined as herein stated:

- A. "Authority" shall mean the California Joint Powers Risk Management Authority created by this Agreement;
- B. "Board" or "Board of Directors" shall mean the governing body of the Authority composed of one representative of each Member Entity;
- C. "Cash Assessment" shall mean an amount determined by the Board of Directors, to be paid by each Member Entity as necessary to meet the Authority's obligations.
- D. "Cash Contribution" shall mean the annual dollar amount determined by the Board of Directors which is payable by each Member Entity as its established share of the funding required to cover the financial obligations of each Pooled Coverage Program in which the Member Entity participates;
- E. "Certificate of Coverage for Additional Covered Party" shall be the document issued by the Authority to third parties specifying the type and amount of pooled coverage provided to the Member Entity by the Authority and extended to the named third party for the specified purpose;
- F. "Claims" shall mean demands made against the Member Entities or the Authority arising out of occurrences which may be within the Authority's pooled coverage programs;

G. "Covered Loss" shall mean any loss resulting from a claim or claims against a Member Entity or the Authority which is in excess of the Member Entity's respective self-funded retention, and is covered by any Memorandum of Coverage issued by the Authority or any purchased coverage programs and shall include loss payments, defense costs and other charges directly attributable to the resolution of the matter including defense costs incurred by the Authority;

H. "Excess Insurance" shall mean that commercial insurance purchased by the Authority to cover losses in excess of the Authority's pooled limits and/or each Member Entity's self-funded retention;

I. "Executive Committee" shall mean that body composed of the President, Vice-President and five additional members of the Board of Directors elected in accordance with the ByLaws of the Authority;

J. "Incurred Loss" shall mean the sum of monies paid or reserved by the Authority to investigate, defend and satisfy a Covered Loss sustained by a Member Entity or the Authority;

K. "Member Entity" shall mean each of the public entities which is a party to this Agreement;

L. "Memorandum of Coverage" shall be the document issued by the Authority to Member Entities specifying the type, amount and conditions of pooled coverage provided to each participant by the Authority;

M. "Pooled Coverage Programs" shall consist of coverages provided directly by the Authority pursuant to a Memorandum of Coverage and/or provided by a purchased coverage program. These may include but not be limited to property, workers' compensation, and liability coverages as may be determined by the Board;

N. "Program Year" shall mean a period of time determined by the Board, usually 12 months, into which each Pooled Coverage Program shall be segregated for purposes of accounting and

record keeping;

O. "Purchased Coverage Program" shall mean any transfer of risk by the Authority through the purchase of commercial excess insurance, participation in a Joint Powers Authority, risk retention group or similar mechanism;

P. "Self Funded Retention" shall mean the amount of a claim which the Member Entity must incur or become liable for before the Authority, or any applicable purchased coverage program is obligated to pay.

ARTICLE IV

PARTIES TO 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 XX. Each party to this Agreement also certifies that the deletion of any party from this Agreement, pursuant to ARTICLE XXI or XXII, shall not affect this Agreement nor the remaining parties' intent to contract as described above with the other parties to the Agreement then remaining. Each party to this Agreement must, at all times, participate in the Automobile/General Liability Program as defined in Article X of the ByLaws.

ARTICLE V

TERM OF AGREEMENT

This Agreement shall become effective as of the date of adoption and shall continue in full force until terminated in accordance with ARTICLE XXIV.

ARTICLE VI

POWERS OF THE AUTHORITY

The Authority is authorized, in its own name, to exercise all powers necessary and proper to carry out the terms and provisions of this Agreement or as otherwise authorized by law, including but not limited to the power to:

- A. Make and enter into contracts;
- B. Incur debts, liabilities and obligations; but no debt, liability or obligation of the Authority is a debt, liability or obligation of any Entity which is a party to this Agreement, except as otherwise provided by ARTICLES XXI and XXII;
- C. Acquire, hold or dispose of real and personal property;
- D. Receive contributions and donations of property, funds, services and other forms of assistance from any source;
- E. Sue and be sued in its own name;
- F. Employ agents and employees;
- G. Acquire, construct, manage and maintain buildings;
- H. Lease real or personal property including that of a Member Entity; and
- I. Receive, collect, invest and disburse monies.

ARTICLE VII

MEMBER ENTITY RESPONSIBILITIES

The Member Entities shall have the following responsibilities:

- A. To cooperate fully with the Authority in determining the cause of losses and in the settlement of claims, as defined in the Memorandum of Coverage;
- B. To pay Cash Contributions, Cash Assessments and other charges, promptly to the Authority when due;

- C. To provide the Authority with such statistical and loss experience data and other information as may be necessary for the Authority to carry out the purposes of this Agreement;
- D. To establish and maintain Risk Management programs including but not limited to loss control, risk transfer and employee safety programs;
- E. To cooperate with and assist the Authority and any insurer, claims adjuster or legal counsel retained by the Authority, in all matters relating to this Agreement;
- F. To comply with the ByLaws and all Policies and Procedures adopted by the Board; and,
- G. To appoint a representative and alternate to the Board of Directors.

ARTICLE VIII

BOARD OF DIRECTORS

There shall be a Board of Directors to govern the affairs of the Authority. It shall be composed of one representative from each Member Entity who shall be an employee or officer of that Member Entity. Each Member Entity shall appoint an alternate to serve in the absence of the representative. The powers of the Board shall be all of the powers of the Authority not specifically reserved to the Member Entities by this Agreement.

POWERS OF MEMBER ENTITIES

The governing boards of the Member Entities hereby retain the following powers:

- A. The appointment of their representative and alternate to the Board of Directors;

- B. Approval of amendments to this Agreement as specified in ARTICLE XXVII; and
- C. Termination of the Authority in accordance with ARTICLE XXIV.

BOARD OF DIRECTORS - APPOINTMENTS

The members of the Board of Directors shall be appointed by the respective Member Entities, in writing to the business office of the Authority. The representative shall serve at the pleasure of the Member Entity until written notice of the appointment of a successor is received by the Authority.

The alternate shall have all the powers of the representative in their absence except that the alternate shall not exercise the powers of an officer of the Authority or serve on the Executive Committee.

ARTICLE IX

COMMITTEES

The Board of Directors shall have the authority to establish committees as it deems appropriate to conduct the business of the Authority. The Board is authorized to dissolve any committee established pursuant to this ARTICLE.

ARTICLE X

EXECUTIVE COMMITTEE

There shall be a seven member Executive Committee of the Board of Directors, composed of the President and Vice President and five Directors elected by the Board to serve on the committee in accordance with the Bylaws.

EXECUTIVE COMMITTEE - POWERS

The powers of the Executive Committee shall be those powers delegated to it by the Board of Directors which may include but are not limited to:

- A. Personnel matters concerning salary, benefits and working conditions of staff;
- B. Approval of warrants;
- C. Approval of Requests for Certificates of Coverage for Additional Covered Parties;
- D. Covered loss settlement authority in an amount as determined by the Board;
- E. Approval of contracts for routine services (claims audit, financial audit, actuarial audit, etc.); and,
- F. Other authority as delegated by the Board.

ARTICLE XI

MEETINGS

BOARD OF DIRECTORS MEETINGS

The Board of Directors shall hold at least four regular meetings each year, one of which shall be designated the Annual Membership Meeting. The Board shall fix the date, hour and location at which each regular meeting is to be held. The General Manager/Secretary may request Special meetings as needs dictate. Special meetings may also be called by the President or at least one-third of the Directors. A Regular or Special meeting may be postponed or cancelled as provided in the ByLaws, except the Annual Membership Meeting may not be cancelled.

EXECUTIVE COMMITTEE MEETINGS

The Executive Committee shall hold at least six regular meetings each year which may coincide with Board meetings or the Annual Membership Meeting, and may hold other meetings as designated by the Board of Directors. The President shall fix the date, hour and location at which the regular meetings are to be held. The President or General Manager/Secretary or a majority of the Executive Committee may request special meetings as needs dictate.

GENERAL

The General Manager/Secretary shall keep minutes of all regular, special and adjourned regular or special meetings of the Board and Executive Committee. As soon as possible after each meeting, a copy of the minutes shall be forwarded to each Member Entity.

The Board shall cause ByLaws and an Administrative Policies and Procedures Manual to be developed, which are consistent with applicable law and this Agreement, to govern the day-to-day operations of the Authority. Each Member Entity shall receive a copy of any ByLaws and Administrative Policies and Procedures Manual developed under this ARTICLE. Thereafter, the Board may revise such ByLaws and Administrative Policies and Procedures so long as they shall be and remain consistent with both applicable law and this Agreement. To the extent such ByLaws and Administrative Policies and Procedures are in conflict with this Agreement the terms and provisions of this Agreement are controlling. The General Manager/Secretary shall send to each Member Entity each ByLaw amendment and Administrative Policy and Procedure change promptly after its adoption by the Board.

Each meeting of the Board and Executive Committee, including, without limitation, regular, special and adjourned regular or special meetings, shall be called, noticed, held and conducted in accordance with applicable state law.

ARTICLE XII

OFFICERS & EMPLOYEES

The Officers of the Authority shall be the President, Vice President, Treasurer and General Manager/Secretary. The President and Vice-President shall be elected by the Board from among its own members, as individuals, not as the Member Entities they represent. The term of office for President and Vice-President shall be two years and they shall assume the duties of their offices upon election. The Treasurer will be appointed by a majority of the entire Board and shall serve at the pleasure of the Board. If the President or Vice-President ceases to be a member of the Board or is removed from office, the resulting vacancy shall be filled, for the unexpired term, at the next regular or special meeting of the Board held after the vacancy occurs.

The General Manager shall be the Secretary and Chief Administrative Officer of the Authority. The Board shall appoint the General Manager/Secretary who shall serve at the pleasure of the Board. The responsibilities and duties of the officers of the Authority shall be as defined in the ByLaws and as assigned by the Board. The Board may appoint such other officers and employees and may contract with such persons or firms as it considers necessary to carry out the purposes of this Agreement.

Any Member Entity which agrees to have an employee or other representative assigned duties pursuant to this ARTICLE may be reimbursed by the Authority for that individual's time and services rendered on behalf of the Authority , at the discretion

of the Board. Any such employee, while acting for or on behalf of the Authority, will be entitled to defense and indemnification by the Authority to the extent provided in California Government Code Sections 825 *et. seq.* and 995 *et. seq.*

ARTICLE XIII

FISCAL YEAR

The first Fiscal Year of the Authority under this Agreement shall be the period from July 1, 1990 thru June 30, 1991 and subsequent Fiscal Years of the Authority shall end on June 30 of each succeeding year.

ARTICLE XIV

BUDGET

An Annual Budget shall be presented by the General Manager/Secretary to the Board not later than thirty (30) days prior to the beginning of each Fiscal Year and shall be adopted no later than July 31 of each year. At the discretion of the Board a multi-year budget may be adopted, thereby eliminating the requirements of annual presentation and adoption during the term of such multi-year budget.

ARTICLE XV

ANNUAL AUDITS AND AUDIT REPORTS

FINANCIAL AUDIT

The Executive Committee shall cause an annual financial audit in accordance with generally accepted auditing standards to be

made with respect to all receipts, disbursements, other transactions and entries into the books by a Certified Public Accountant, and a report of such financial audit shall be filed as a public record with each of the Member Entities. All costs of such financial audit shall be paid by the Authority as a general and administrative expense.

RISK MANAGEMENT AUDITS

The Board may cause an audit to be made of any of the Member Entities risk management programs. All costs of such audits shall be paid by the Authority as a general and administrative expense.

ARTICLE XVI

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 shall be held in common and strictly accounted for.

The Treasurer or Board's designee shall receive, invest, and disburse funds only in accordance with the procedures established by the Board and in conformity with applicable law. The General Manager/Secretary shall have the authority to expend funds which have been budgeted, as provided in the ByLaws.

An Investment Policy shall be adopted by the Board and reviewed annually.

ARTICLE XVII

CASH CONTRIBUTION

Each Member Entity shall make a cash contribution for each year of participation in each Pooled Coverage Program in an amount approved by the Board of Directors. The amount of such cash contribution shall be determined in accordance with a formula contained in the ByLaws of the Authority or a policy established pursuant to the ByLaws and shall be sufficient, when combined with the cash contributions of all other participants in such Pooled Coverage Programs, to cover the outstanding liabilities, actuarially predicted losses, loss adjustment expenses, defense costs, excess insurance premiums and administrative expenses of the Authority.

The cash contribution shall be billed to the Member Entities prior to the beginning of each program year and is due and payable by the date of commencement of the program year. Any cash contributions not received by the Authority within thirty (30) days following the date of commencement of the program year shall be in arrears and subject to interest and/or penalties in accordance with the ByLaws or any policy adopted pursuant to the ByLaws of the Authority.

ARTICLE XVIII

CASH ASSESSMENT

The Board by a two-thirds vote of the entire body shall have the authority to levy a cash assessment upon a determination that it is necessary to meet the Authority's obligations.

All cash assessments shall be determined and payable in accordance with the policy contained in the ByLaws.

ARTICLE XIX

POOLED COVERAGE PROGRAMS

The pooled coverage for each program shall be as specified in the ByLaws and applicable policies and procedures. Each Member Entity electing coverage in the Automobile/General Liability program commencing on July 1, 1990, which was a member of such program on July 1, 1989 shall have an initial one-year non-cancellable commitment to the program and the Authority. Any other Member Entity accepted for membership in the Authority shall have an initial three-program-year, non-cancellable commitment. Each Member Entity may participate in such other Pooled Coverage Programs as are offered by the Authority on such terms, for such time periods and with such cash contributions as are determined by the Board.

At the conclusion of the initial non-cancellable commitment Member Entities may continue to participate with subsequent one program year commitments. All Member Entities must participate in the Automobile/General Liability Program in order to maintain their membership in the Authority and participate in any other pooled coverage programs.

Member Entities shall have the ability to determine, from year to year, which Board established self-funded retention level they will assume in the Automobile/General Liability program.

Such determinations must be communicated in writing to the Authority by December 31, 1990 and thereafter at least one hundred eighty (180) days prior to the commencement of each succeeding program year.

Member Entities electing to participate in an existing pooled coverage program of the Authority may do so only upon the affirmative vote of two-thirds of the participants in that pooled coverage program at the time of their application to participate.

ARTICLE XX

NEW MEMBERS

It is the intent of the Member Entities to provide, to the extent permitted by law, for the inclusion at a subsequent date of such additional public entities, organized and existing under the Constitution or laws of the State of California, as may desire to become parties to this Agreement and members of the Authority.

The Board shall review all applications for participation in the Authority. Those entities seeking membership must be approved by the affirmative vote of a two-thirds majority of the entire Board of Directors.

Entities applying under this ARTICLE shall be required to pay their share of organizational expenses as determined by the Board, including those costs necessary to analyze their loss data and determine their cash contributions.

Cash Contributions for entities joining the Authority at other than the beginning of the Authority's program year, shall be prorated for the remainder of the program year.

ARTICLE XXI

WITHDRAWAL FROM PROGRAM AND/OR CJPRMA

An entity which is accepting membership in the Authority's Automobile/General Liability Program for coverage commencing on July 1, 1990 and which is a participant on July 1, 1989, shall not withdraw from that program or the Authority for a one-program year period. All other Member Entities shall have an initial Three-Program-Year, non-cancellable commitment to the program and the Authority. At the conclusion of such non-cancellable commitment, a Member Entity may continue to participate with successive one program year commitments.

A Member Entity may withdraw from the Automobile/General Liability Program, which will result in automatic withdrawal from all other pooled coverage programs and from the Authority, by giving written notice of such withdrawal no later than six months prior to the conclusion of the program year in which the Member Entity's non-cancellable commitment is completed, or any subsequent Program Year.

A Member Entity may withdraw from other pooled coverage programs by written notice in accordance with deadlines established by the Board.

Any Member Entity which withdraws as a participant of any pooled coverage program or as a party to this Agreement, shall not be re-admitted except upon the affirmative vote of two-thirds of the participants of such pooled coverage program or the Authority.

ARTICLE XXII

EXPULSION

The Board, by a three-fourths vote of all Directors, may expel any Member Entity from the Authority after ninety (90) days written notice to the Member Entity. Such expulsion shall be effective at the conclusion of the Automobile/General Liability Program Year in which the notice is given, unless extended by the Board.

ARTICLE XXIII

EFFECT OF WITHDRAWAL OR EXPULSION

The withdrawal or expulsion of any Member Entity after the inception of its participation in the Authority or any pooled coverage program shall not terminate its responsibility:

- A. To cooperate fully with the Authority in determining the cause of losses and in the settlement of claims incurred during the coverage period, as defined in the Memorandum of Coverage;
- B. To pay any Cash Assessments or other amounts determined by the Board to be due and payable for each program year of each program in which it participated until all claims, or other unpaid liabilities, covering such periods have been finally resolved;
- C. To provide the Authority with such statistical and loss experience data and other information as may be necessary for the Authority to carry out the purposes of this Agreement; and

D. To cooperate with and assist the Authority and any insurer, claims adjuster or legal counsel retained by the Authority, in all matters relating to this Agreement.

Coverages under all pooled coverage programs in which that Member Entity participated will remain in effect and continue until the conclusion of their respective program years.

ARTICLE XXIV

TERMINATION AND DISTRIBUTION

This Agreement may be terminated any time by the written consent of three-fourths of the Member Entities' governing boards provided however that all Member Entities are notified in writing at least ninety (90) days in advance and; 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. Notification of the action of the Member Entities' governing boards in terminating this Agreement may be delivered by mail to the Authority or in person by each Member Entity's representative or alternate at a regular or special meeting of the Board of Directors.

Upon termination of this Agreement, all assets of the Authority shall be distributed only among the parties which have been participants in its pooled coverage programs, including any of those parties which previously withdrew or were expelled pursuant to ARTICLES XXI and XXII of this Agreement and in accordance with the terms and conditions of the ByLaws of the Authority. The Board shall determine such distribution within six months after the last pending claim or covered loss subject to this Agreement has been finally resolved.

The Board is vested with all powers of the Authority for the purpose of concluding and dissolving the business affairs of the Authority. These powers shall include the power to require Member Entities, including those which were program participants at the time the claim arose or at the time the covered loss was incurred, to pay their share of any cash assessment deemed necessary by the Board for final disposition of all such claims and covered losses subject to this Agreement.

ARTICLE XXV

NOTICES

Notices to Member Entities under this Agreement shall be sufficient if mailed, first class, to their respective addresses on file with the Authority. Notices to the Authority shall be sufficient if mailed, first class, to the address of the Authority as contained in the ByLaws.

ARTICLE XXVI

PROHIBITION AGAINST ASSIGNMENT

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

ARTICLE XXVII

AMENDMENTS

This Agreement may be amended by the vote of three-quarters or more of the Member Entities' governing boards, provided that any amendment is compatible with the purposes of this Agreement and has been submitted to the Member Entities at least thirty (30) days in advance. Any such amendment shall be effective immediately upon receipt by the Authority of votes sufficient for passage, unless otherwise designated. Notification of the action of the Member Entities' governing boards may be delivered by mail return receipt requested) to the Authority or in person by each Member Entity's representative or alternate at any regular or special meeting of the Board.

ARTICLE XXVIII

SEVERABILITY

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 the United States, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions and provisions shall not be affected thereby.

ARTICLE XXIX

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.