

**JOINT EXERCISE OF POWERS AGREEMENT  
TO ESTABLISH THE CAPITOL CORRIDOR  
JOINT POWERS AUTHORITY**

This Agreement ("Agreement") is made and entered into in the State of California by and among the Capitol Corridor Joint Powers Board and the following public agencies that are parties to this Agreement:

- (a) Placer County Transportation Planning Agency ("PCTPA");
- (b) Sacramento Regional Transit District ("SRTD");
- (c) San Francisco Bay Area Rapid Transit District ("BART");
- (d) Santa Clara County Transit District, a/k/a Santa Clara Valley Transportation Authority ("VTA");
- (e) Solano Transportation Authority ("STA"), the county congestion management agency for the County of Solano; and
- (f) Yolo County Transit Authority, the county congestion management agency for the County of Yolo, a/k/a Yolo County Transportation District ("YCTD"),

all of whom collectively are sometimes hereinafter referred to as the "Agencies."

**RECITALS**

This Agreement is made with reference to the following facts:

- A. The Governor of California signed into law S.B. 457, as Chapter 263, Statutes of 1996, the Intercity Passenger Rail Act of 1996, on July 23, 1996, adding, among other things, Article 5 and 5.6 to Chapter 1, Part 5, Division 3, Title 2 commencing with Section 14070; repealing and adding Section 14031.8; and repealing Sections 14031.9 and 14031.10 of the California Government Code; and creating, among other things, the Capitol Corridor Joint Powers Board ("CCJPB") which, if certain requirements are met, principally the execution of an interagency transfer agreement ("Interagency Agreement") with the State of California, will manage the Capitol Corridor rail service ("Capitol Corridor Rail Service"). Chapter 263 provides, among other things, the following:
  - (i) For the establishment of a Capitol Corridor Joint Powers Board to be composed of not more than sixteen members, six of whom shall be members of the BART Board of Directors (two each who are residents of Alameda County, Contra Costa County and San Francisco County); two members of the Board of Directors of SRTD; two members of the Board of Directors of VTA; two members of the Board of Directors of YCTD; two members of the Board of Directors of STA; and two members of the Board of Directors of PCTPA;

- (ii) For the CCJPB to be deemed organized when at least two of the Agencies described in the previous paragraph elect to appoint members to serve on the Board; further, only those Agencies that appoint members to serve on the CCJPB prior to December 31, 1996 shall be member Agencies of the CCJPB;
- (iii) For the CCJPB, by December 31, 1996, to enter into the Interagency Agreement with the State of California, with an initial term ("Initial Term") commencing with the transfer of the responsibilities from the State to the CCJPB, and continuing for three years following the completion of track and signal improvements between Sacramento and Emeryville ("Track and Signal Improvements"). Should the Interagency Agreement not be executed by December 31, 1996, a report shall be made by the Secretary of the Business, Transportation and Housing Agency to the Governor and the Legislature by January 30, 1997 explaining the reasons therefor and proposing specific recommendations for developing an acceptable Interagency Agreement.
- (iv) For BART to provide all necessary administrative support to the CCJPB to perform its duties and responsibilities during the Initial Term of the Interagency Agreement;
- (v) That at the conclusion of the Initial Term, the CCJPB may, through procedures that it determines, select BART or another existing public rail transit agency, for a subsequent three year term to continue to administer the rail service under the direction of the CCJPB;
- (vi) That the CCJPB shall produce a business plan ("Business Plan") for each of the initial five years of operation of the service which shall describe the methods by which the CCJPB will administer rail service and seek to increase ridership in the Capitol Corridor and which shall be updated and submitted by the CCJPB to the Secretary of the Business, Transportation and Housing Agency by April 1 of each year;
- (vii) That the CCJPB will, through the Interagency Agreement, succeed to the State's current agreement with Amtrak for the operation of the Capitol Corridor Rail Service and may initiate changes in said agreement or, in the future, may, through a competitive solicitation process, contract with Amtrak, or other organizations not precluded by State or Federal law to provide passenger rail services, to operate the rail service;
- (viii) That the State shall maintain funding in an amount to support at least the current level of service in the Capitol Corridor for not less than a three-year period.

- (ix) That the level of service funded by the State shall in no event be less than the current number of intercity round trips currently operated in the Capitol Corridor, and shall also include feeder bus service with substantially the same number of route miles as the current feeder system.
- B. The CCJPB has been formed in accordance with the provisions of Section 14076.2 of the California Government Code. Further, it is the intent of the Legislature as expressed in Section 14070(a) of the California Government Code that a joint exercise of powers agency be established for the purpose of assuming administrative responsibility for Capitol Corridor Rail Service and that such joint powers agency is to be governed by the CCJPB. Therefore the CCJPB and the Agencies desire to create a joint powers authority to carry out and further define the administrative responsibilities for the Capitol Corridor Rail Service.
- C. Each of the Agencies is authorized to contract with each other for the joint exercise of any common power under Article 1, Chapter 5, Division 7, Title 1, Sections 6500 et seq. of the California Government Code.

## AGREEMENT

**NOW THEREFORE**, in consideration of the recitals and the rights, duties and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CCJPB and the Agencies hereby agree to the following:

### 1.0 DEFINITIONS

The terms defined in this Section 1.0 shall for all purposes of this Agreement have the meanings specified herein.

"Agency" shall mean each of those local governmental entities set forth in paragraphs (a) through (f) of the caption to this Agreement that have executed this Agreement and that have not withdrawn from the Authority.

"Authority" shall mean the Capitol Corridor Joint Powers Authority formed by the Agencies and the CCJPB pursuant to Article 1, Chapter 5, Division 7, Title 1, Sections 6500 et seq. of the California Government Code.

"Business Plan" shall mean the business plan to be submitted by the CCJPB to the Secretary of the Business, Transportation and Housing Agency covering the initial five year term of the Agreement as mandated by Chapter 263 and updated and submitted annually thereafter.

"Capitol Corridor Joint Powers Board" or "CCJPB" shall mean the governing body of the Authority, which shall assume administrative responsibility for the Capitol Corridor Rail Service.

"Capitol Corridor Rail Service" shall mean the existing intercity rail service in the Colfax-Sacramento-Suisun City-Oakland-San Jose corridor, as modified and developed by the Authority pursuant to this Agreement.

"Capital Improvement Program" shall mean a program of capital improvements developed by the CCJPB and the Managing Agency for inclusion in the Authority's budget.

"Interagency Agreement" shall mean the agreement provided for in Chapter 263 whereby the State of California will transfer all responsibility for administering the Capitol Corridor Rail Service to the CCJPB.

"Interim Workplan" shall mean the workplan proposed for the period commencing with the execution of this Agreement, and ending with the current fiscal year.

"Initial Term" shall mean the period that begins with the transfer of responsibilities from the California Department of Transportation to the CCJPB and continues for a three-year period subsequent to the completion of the Track and Signal Improvements.

"Managing Agency" shall mean BART for the Initial Term and thereafter, BART or another existing public rail transit agency.

"Track and Signal Improvements" shall mean the improvements to the Capitol Corridor being performed pursuant to the agreement dated February 20, 1996 between the State of California and the Southern Pacific Transportation Company.

## **2.0 CREATION OF AUTHORITY**

There is hereby created an organization to be known as the Capitol Corridor Joint Powers Authority, which shall be a public entity separate and apart from any member Agency and the CCJPB. The Authority shall be governed by the terms of this Agreement and those by-laws passed and adopted by its governing Board, the CCJPB, which do not conflict with this Agreement.

## **3.0 PURPOSES**

It is the purpose of the Authority to administer and manage the operation of the Capitol Corridor Rail Service as part of the California passenger rail system.

## **4.0 POWERS OF THE CCJPB**

Subject to the limitations on the exercise of its powers as set forth in Chapter 263, all action of the CCJPB shall be taken in accordance with and under the provisions of this Agreement.

## 5.0 POWERS OF THE AUTHORITY

The Authority shall have all powers necessary or reasonably convenient to carry out the purposes stated in Section 3.0, including but not limited to the following:

- 5.1 To exercise in the manner provided by this Agreement the powers common to each of the Agencies and necessary to the accomplishment of the purposes of this Agreement. Powers common to each of the Agencies shall include any powers granted to all Agencies by legislative amendment subsequent to the date of this Agreement;
- 5.2 To make and enter into contracts;
- 5.3 To employ agents and employees;
- 5.4 To contract for the services deemed necessary to meet the purposes of the Authority including the retention of counsel as the CCJPB deems appropriate;
- 5.5 To acquire, including by lease or purchase, and to hold and dispose of real and personal property necessary to carry out the purposes of this Agreement;
- 5.6 To construct, manage, and maintain facilities and services;
- 5.7 To sue and be sued in its own name;
- 5.8 Subject to the provisions of Section 9.4 below, to incur debts, liabilities and obligations; however, the debts, liabilities and obligations of the Authority shall not constitute any debt, liability, or obligation of any of the Agencies or the CCJPB;
- 5.9 Subject to the provisions of Section 7.0 below, to apply for and accept grants for financial aid pursuant to any applicable State or Federal statutes; and
- 5.10 Subject to the provisions of Section 9.4 below, to raise funds through the issuance of bonds of the Authority pursuant to Article 4, Chapter 5, Division 7, Title 1, Sections 6584 et seq. of the California Government Code.
- 5.11 Pursuant to the requirements of California Government Code Section 6509, in exercising its powers, the Authority shall be subject to the statutory restrictions upon the manner of exercising the powers of BART.
- 5.12 Subject to a determination by the CCJPB, to develop procedures and issue a Request for Proposals to select a Managing Agency at the conclusion of the Initial Term.

## **6.0 MANAGING AGENCY**

Subject to the policy direction and control of the CCJPB, BART shall serve as Managing Agency of the Authority for the Initial Term and in that capacity shall provide all necessary administrative support to the Authority.

The Managing Agency shall solicit the input and participation of the other Agencies and endeavor to achieve consensus while providing the following administrative support to the Authority:

- (i) Negotiate and recommend the award of all necessary agreements for the Authority, including but not limited to the Interagency Agreement, agreements for the provision of passenger rail services, and use of tracks and other facilities, subject to approval by the CCJPB;
- (ii) Manage all agreements entered into by the Authority;
- (iii) Implement projects contained in the approved Capital Improvement Program unless the administration of particular capital projects is more appropriately managed in another manner, such as by an individual Agency or a local government, as determined by the CCJPB;
- (iv) Provide for the maintenance and management of such property as may be owned or controlled by the Authority unless the administration of that property is more appropriately managed in another manner, such as by an individual Agency or a local government, as determined by the CCJPB;
- (v) Provide a risk management program to cover the Authority, the CCJPB, and each of the Agencies in the performance of their duties pursuant to this Agreement, and seek appropriate insurance coverage to implement such risk management program.
- (vi) Seek, obtain and administer grants, subject to the provisions of Section 7.0 below;
- (vii) Develop and implement marketing programs;
- (viii) Prepare and submit financial reports;
- (ix) Prepare for approval by the CCJPB the Business Plan;
- (x) Report regularly to the Authority regarding Capitol Corridor issues;
- (xi) Recommend changes in fares and the collection of fares to the Authority;
- (xii) Recommend changes in scheduling and levels of service to the Authority;
- (xiii) Prepare and implement changes in scheduling and fares, subject to appropriate public involvement;
- (xiv) Prepare capital and operating budgets for presentation to the Authority;
- (xv) Facilitate interaction with other entities involved in operation, construction and renovation of the Capitol Corridor Rail Service; and
- (xvi) Negotiate with any other public or private transportation providers as necessary to ensure coordinated service with the Capitol Corridor Rail Service.

## **7.0 SOLICITATION OF GRANTS**

The Managing Agency shall pursue any and all sources of funding for the Authority;

provided, however, that neither the Managing Agency, on behalf of the Authority, and/or the CCJPB, nor the Authority or the CCJPB shall apply for Transportation Development Act Funds as defined in Chapter 4, Part 11, Division 10 of the California Public Utilities Code or for any funding that any Agency is also an applicant or approving Agency for without the express consent of that Agency.

## **8.0 CUSTODIAN OF PROPERTY**

- 8.1 Pursuant to the requirements of California Government Code Section 6505.1, the Managing Agency's Controller-Treasurer shall have charge of, handle, and have access to any property of the Authority, and shall amend the official bond with the Managing Agency to provide for coverage, in the same amount, for the duties of the Controller/Treasurer set forth in this Agreement.
- 8.2 The Controller-Treasurer of the Managing Agency shall be the Treasurer of the Authority. Subject to the applicable provisions of any indenture, trust agreement or resolution providing for a trustee or other fiscal agent, the Treasurer is designated as the depository of the Authority to have custody of all the money of the Authority, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the California Government Code.
- 8.3 The Controller-Treasurer of the Managing Agency, who performs the functions of auditor and controller for the Managing Agency, shall be the Controller of the Authority, and, as such, shall have the power, duties and responsibilities specified in Sections 6500 and 6505.5 of the California Government Code. The Controller-Treasurer shall draw checks to pay demands against the Authority when the demands have been approved by the CCJPB.
- 8.4 Upon providing reasonable notice, any Agency shall have the right to review any records maintained by the Managing Agency or the Managing Agency's Controller/Treasurer relating to the performance of their duties pursuant to this Agreement.

## **9.0 BUDGET AND FUNDING**

- 9.1 The Managing Agency shall prepare and submit to the CCJPB for approval within thirty days of the effective date of this Agreement the Interim Workplan, which shall include recommendations for start-up funding needs and sources of funding therefor.
- 9.2 The Managing Agency shall prepare and submit to the CCJPB for approval a preliminary operating and capital budget for the succeeding fiscal year by April 1 of each year which is consistent with the prior Business Plan submitted. The Authority shall by resolution adopt a final budget no later than June 30 of each year. The fiscal year shall be July 1 of each year to and including the following

June 30. The budget shall include separate components for Managing Agency administration costs, operations, and capital costs anticipated to be incurred by the Authority during the fiscal year. The annual budget resolution shall set forth the authority of the Managing Agency to make capital and operating expenditures during the fiscal year, subject to such policy guidelines as the CCJPB may establish.

- 9.3 It is the intent of the Agencies to fully fund the annual budget from State and other non-Agency funding sources. The Authority shall not operate at a deficit.
- 9.4 No funding, debt, or financial obligation is created against any Agency solely as a consequence of executing this Agreement and no funding, debt, or financial obligation approved by the CCJPB and/or incurred by the Authority shall be binding against an Agency unless and until ratified by that Agency's governing body.

## **10.0 LIABILITY OF AUTHORITY, AGENCIES, OFFICERS AND EMPLOYEES**

The debts, liabilities, and obligations of the Authority shall not be the debts, liabilities and obligations of any of the Agencies, the CCJPB or any of their respective members, officers, directors, employees or agents. Any obligations incurred by any bonds issued by the Authority as set forth in Section 5.10 above shall not constitute general obligations of the Authority but shall be payable solely from the moneys pledged to the repayment of such obligations or the repayment of principal or interest on such bonds under the terms of the resolution, indenture, trust agreement, contract or other instrument pursuant to which the obligation is incurred or the bonds are issued. The CCJPB and the Managing Agency, their directors, officers, employees, staff and agents shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No Agency or CCJPB member, officer, director or employee shall be responsible for any action taken or omitted by any other Agency or CCJPB member, officer, director or employee. The Authority shall indemnify, defend and hold harmless the CCJPB, the individual Agencies, their members, officers, directors, employees and agents from and against any and all liability, loss, damage, expenses, costs (including, without limitation, costs and fees of litigation or arbitration) of every nature, arising out of any act or omission related to this Agreement, except such loss or damage which was caused by the wilful misconduct of the CCJPB or any individual Agency. The Authority's duty to indemnify each Agency shall survive that Agency's withdrawal from the Authority.

## **11.0 SERVICES BY MANAGING AGENCY**

Subject to the provisions of Section 9 above, the Authority shall enter into a formal contract with the Managing Agency for the services the Managing Agency will perform pursuant to this Agreement, and the compensation for such services.



## **12.0 FILING WITH SECRETARY OF STATE**

As required by Section 6503.5 of the California Government Code, an appropriate notice of this Agreement shall be filed with the Secretary of State within thirty days of its effective date.

## **13.0 BY-LAWS**

The Authority may adopt from time to time by-laws as may be required for the conduct of its meetings, voting rights, specifications of officers of the Authority, and other matters concerning the orderly operation of the Authority.

## **14.0 WITHDRAWAL BY AGENCY**

14.1 Notwithstanding any other provision of this Agreement, any Agency may withdraw from the Authority by giving thirty days advance written notice to the CCJPB. Any withdrawal from the Authority will also constitute withdrawal from the CCJPB.

14.2 The rights and obligations of any Agency so withdrawing from the Authority and the CCJPB shall be determined by negotiation between the CCJPB and the withdrawing Agency; provided, however, that debts and financial obligations of the withdrawing Agency shall not be greater than those agreed to by the withdrawing Agency pursuant to Section 9.4, above. In the event that the CCJPB and the withdrawing Agency cannot agree upon the rights and obligations of the withdrawing Agency, such rights and obligations shall be determined by arbitration pursuant to Section 18.0, below.

## **15.0 TERMINATION**

This Agreement shall continue in full force and effect until such time as the Agencies and the CCJPB determine that it is in the public interest to dissolve the Authority. Notwithstanding the foregoing, any of the Agencies may exercise its prerogative to terminate its membership in the Authority as set forth in Section 14.1, above. Upon termination of this Agreement by mutual consent of all the Agencies, all assets, liabilities and equity of the CCJPB shall be distributed in accordance with the provisions of the Interagency Agreement and any other agreements authorized by the CCJPB governing such distribution, and any remaining money or assets in possession of the Authority after the payment of all liabilities, costs, expenses, and charges validly incurred under this Agreement shall be returned to the Agencies in proportion to their contributions, if any, determined as of the time of termination.

## **16.0 INDEPENDENT AUDIT**

Pursuant to and in accordance with the requirements of California Government Code Section 6505, the Managing Agency's Controller-Treasurer shall provide for an annual

independent audit of the accounts of the Authority within six months of the close of the fiscal year.

## **17.0 AMENDMENTS TO THE AGREEMENT**

Amendments or modifications of this Agreement may be approved at any time by the CCJPB, with the unanimous consent of the Agencies. To be effective, all amendments and modifications must be in writing and signed by all member Agencies and the CCJPB.

## **18.0 ARBITRATION:**

18.1 In the event of a dispute between the Authority, the CCJPB, the Managing Agency or any other Agency or Agencies, which cannot be satisfactorily resolved by those parties, said dispute shall be submitted to arbitration by a panel of three arbitrators who shall conduct the arbitration pursuant to the rules of the American Arbitration Association. The panel of arbitrators shall consist of one arbitrator appointed by each of the disputants, the third arbitrator to be appointed by mutual consent of the other two arbitrators. The arbitration panel shall resolve the dispute in accordance with the terms of this Agreement, and such resolution shall be final and binding upon the parties. Each party shall bear its own costs of arbitration, including reasonable attorneys fees. The cost of the third arbitrator shall be divided equally between the disputants.

18.2 Unless otherwise agreed by the disputants, only disputes regarding a disputant's rights and obligations arising under the terms of: (i) this Agreement, or (ii) any other agreement between the disputants in which this arbitration provision is incorporated by reference shall be subject to arbitration pursuant to Section 18.1, above.

## **19.0 APPOINTMENT OF MEMBERS TO CCJPB**

Each signatory Agency to this Agreement shall have appointed its members to the CCJPB prior to and as a condition of its executing this Agreement. Members so appointed shall serve at the pleasure of their appointing bodies.

## **20.0 CONFLICT OF INTEREST CODE**

The Authority by resolution shall adopt a conflict of interest code as required by law.

## **21.0 SUCCESSOR STATUTES**

All statutes cited herein shall be deemed to include amendments and/or successor statutes to the cited statutes as they presently exist.

**22.0 CONSTRUCTION: NUMBER, GENDER AND CAPTIONS**

This Agreement has been executed in the State of California and shall be construed according to the law of said State. Numbers and gender as used herein shall be construed to include that number and/or gender which is appropriate in the context of the text in which either is included. Captions are included herein for the purposes of ease of reading and identification. Neither gender, number nor captions used herein shall be construed to alter the plain meaning of the text in which any or all of them appear.

**23.0 AGREEMENT COMPLETE**

This Agreement constitutes the full and complete agreement of the parties, superseding and incorporating all prior oral and written agreements relating to the subject matter of this Agreement.

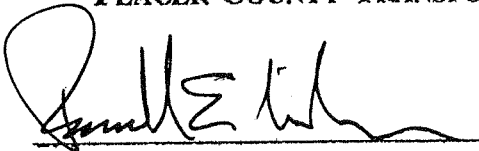
**24.0 COUNTERPARTS**

This Agreement may be executed in one or more counterparts and may include multiple signature pages, all of which shall be deemed to be one instrument. Copies of this Agreement may be used in lieu of the original.

**25. EFFECTIVE DATE**

This Agreement shall be effective upon execution by all of the Agencies.

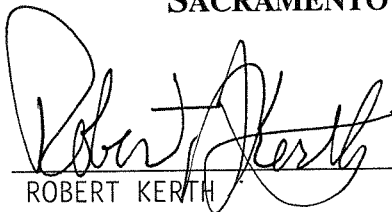
PLACER COUNTY TRANSPORTATION PLANNING AGENCY

By: 

Date: DEC 16, 1996

Title: Chairman, PCTPA

**SACRAMENTO REGIONAL TRANSIT DISTRICT**

**By:**   
ROBERT KERTH

**Date:** 12/31/96

**Title:** CHAIR, RT BOARD OF DIRECTORS

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

**By:** 

**Date:** November 28, 1996

**Title:** President


SANTA CLARA COUNTY TRANSIT DISTRICT

By: *Paul M. Cipolla*

Date: *12/11/96*

Title: *General Manager.*

**SOLANO TRANSPORTATION AUTHORITY**

**By:** 

**Date:** 11/13/96

**Title:** Steve Lessler, Chairman



YOLO COUNTY TRANSIT AUTHORITY\*

By:



Date:

11-20-96

Title:

Chair

\*After July 1, 1997, the YOLO COUNTY TRANSPORTATION DISTRICT