DATE: May 22, 2012

AGENDA ITEM # 4

AGENDA REPORT

TO: City Council

FROM: J. Logan, Assistant City Manager

SUBJECT: Resolution to join Bay Cities Joint Powers Insurance Authority

RECOMMENDATION:

Approve Resolution No. 2012-12 to join Bay Cities Joint Powers Insurance Authority

---

SUMMARY:

Estimated Fiscal Impact:

Amount: None

Budgeted:

Public Hearing Notice: Not applicable

Previous Council Consideration: May 8, 2012

CEQA Status: Not applicable

Attachments:

1. Resolution No. 2012-12

BACKGROUND

As summarized in the May 8, 2012 staff report to Council, application for membership in a pooled general liability program was sent to Bay Cities Joint Powers Insurance Authority (BCJPIA). After exercise of due diligence by both parties, the BCJPIA Executive Committee extended initial approval of membership to the City of Los Altos to join its pool.

On May 8, 2012, Council approved and authorized the following recommendations:

A. Approve membership in Bay Cities Joint Powers Insurance Authority and the purchase of General Liability insurance
B. Approve membership in Employment Risk Management Authority and the purchase of Employment Practices Liability insurance
C. Authorize City Manager to execute documents to become a member and to purchase insurance with Bay Cities Joint Powers Insurance Authority
D. Authorize City Manager to execute documents to become a member and to purchase insurance with Employment Risk Management Authority
E. Authorize City Manager to execute documents to withdraw from the current insurance provider, Association of Bay Area Governments Pooled Liability Assurance Network

DISCUSSION

On May 15, 2012, the Bay Cities Joint Powers Insurance Authority (BCJPIA) held a Special Board of Directors Meeting to consider final approval of membership for the City of Los Altos. A quorum of members was present and they reviewed and discussed the BCJPIA staff report and unanimously approved the City of Los Altos for membership in the Pooled General Liability, Property and Auto Physical Damage Programs.

Subsequent to the May 15, 2012 action by the BCJPIA Board of Directors, approval is now needed by Council of Resolution No. 2012-12 to finalize membership in BCJPIA.

FISCAL IMPACT

None

PUBLIC CONTACT

Posting of the meeting agenda serves as notice to the general public.

ALTERNATIVE

Do not finalize membership in BCJPIA for purchase of insurance for the Pooled General Liability, Property and Auto Physical Damage Programs

ATTACHMENT 1

RESOLUTION NO. 2012-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS AUTHORIZING PARTICIPATION IN BAY CITIES JOINT POWERS INSURANCE AUTHORITY

WHEREAS, the Bay Cities Joint Powers Insurance Authority (BCJPIA) provides risk-sharing, pooled liability, workers' compensation, property and auto physical damage coverage to its public entity members, as well as other ancillary coverages and services; and

WHEREAS, the City Council on May 8, 2012 approved membership in Bay Cities Joint Powers Insurance Authority (BCJPIA) and the purchase of General Liability insurance; and

WHEREAS, the City Council on May 8, 2012 authorized the City Manager to execute documents to become a member and to purchase insurance with Bay Cities Joint Powers Insurance Authority.

NOW THEREFORE, BE IT RESOLVED, that:

1. The City Council of the City of Los Altos hereby approves and authorizes participation in the BCJPIA.

2. The City Council of the City of Los Altos desires to participate in BCJPIA beginning 12:00 am on July 1, 2012 for a minimum period of three years.

3. The Joint Exercise of Powers Agreement, in the form attached as Exhibit A, is hereby approved by the City Council of the City of Los Altos, and the City Manager of the City of Los Altos is hereby authorized and directed to execute the Agreement on behalf of the City of Los Altos.

4. The City Manager of the City of Los Altos is also authorized to execute any other document(s) that may be necessary or appropriate to enter into and implement the Agreement on behalf of the City of Los Altos.

5. The City of Los Altos consents to be governed for liability, property, and auto physical damage coverage in accordance with the Master Program Documents, the Memoranda of Coverage, and other documents and policies as adopted by the Board.

6. The City of Los Altos shall appoint a Director, which shall be the Chief Administrative Officer or his or her designee, to be a representative on the BCJPIA's Governing Board. The alternate Director shall be appointed by and serve at the pleasure of the Director.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the 22nd day of May, 2012 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Valorie Cook Carpenter, MAYOR

Attest:

_____
Jon Maginot, DEPUTY CITY CLERK

EXHIBIT A

JOINT POWERS AGREEMENT

CREATING THE

BAY CITIES JOINT POWERS INSURANCE AUTHORITY

adopted

August 13, 1986

amended

March 15, 1996

JOINT POWERS AGREEMENT
TABLE OF CONTENTS

ARTICLE I	CREATION OF THE BAY CITIES JOINT POWERS INSURANCE AUTHORITY	1
ARTICLE II	PURPOSES	2
ARTICLE III	DEFINITIONS	2
ARTICLE IV	PARTIES TO AGREEMENT	3
ARTICLE V	TERM OF AGREEMENT	3
ARTICLE VI	POWERS OF THE AUTHORITY	3
ARTICLE VII	MEMBERSHIP	4
ARTICLE VIII	MEMBER ENTITY RESPONSIBILITIES	4
ARTICLE IX	BOARD OF DIRECTORS	5
ARTICLE X	COMMITTEES	6
ARTICLE XI	BOARD AND COMMITTEE MEETINGS	6
ARTICLE XII	OFFICERS & EMPLOYEES	6
ARTICLE XIII	ANNUAL AUDITS AND AUDIT REPORTS	7
ARTICLE XIV	INDEMNIFICATION OF DIRECTORS, OFFICERS, AND EMPLOYEES	7
ARTICLE XV	SELF INDEMNIFICATION AMONG THE MEMBER ENTITIES	8
ARTICLE XVI	NEW MEMBERS	8
ARTICLE XVII	WITHDRAWAL	8
ARTICLE XVIII	EXPULSION	9
ARTICLE XIX	TERMINATION AND DISTRIBUTION	9

ARTICLE XX	NOTICES	9
ARTICLE XXI	BINDING EFFECT OF BYLAWS AND OTHER GOVERNING DOCUMENTS	9
ARTICLE XXII	ENFORCEMENT	10
ARTICLE XXIII	PROHIBITION AGAINST ASSIGNMENT	10
ARTICLE XXIV	AMENDMENTS	10
ARTICLE XXV	SEVERABILITY	10

BAY CITIES JOINT POWERS INSURANCE AUTHORITY

JOINT POWERS AGREEMENT

This Agreement is made by and among the public entities listed in Appendix A ("Member Entities"), all of which are public entities organized and operating under the laws of the State of California and each of which is a local public entity as defined in California Government Code Section 989, as it may be amended from time to time.

RECITALS

I. The following state laws, among others, authorize the Member Entities to enter into the Bay Cities Joint Powers Insurance Authority Joint Powers Agreement ("Agreement"):

1. Labor Code Section 3700 allowing a local public entity to fund its own workers' compensation claims;

2. Government Code Sections 989 and 990 permitting a local public entity to insure itself against liability and other losses;

3. Government Code Section 990.4 permitting a local public entity to provide insurance and self-insurance in any desired combination;

4. 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

5. 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 Member Entity has determined that it is in the Member Entity's best interest and in the public interest that this Agreement be executed and that it shall participate as a member of the public entity created by this Agreement.

Now, therefore, the Member Entities, by, between, and among themselves, in consideration of the mutual benefits, promises, and agreements set forth below, hereby agree as follows:

ARTICLE I

CREATION OF THE "BAY CITIES JOINT POWERS INSURANCE 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 Member Entities create a public agency, separate and apart from the Member Entities, to be known as the "Bay Cities Joint Powers Insurance Authority" (the "Authority"). Pursuant to Government Code Section 6508.1, the debts, liabilities,

and obligations of this Authority shall not constitute debts, liabilities, or obligations of the Member Entities.

ARTICLE II

PURPOSES

This Agreement is entered into by Member Entities under California Government Code Sections 990, 990.4, 990.8, and 6500, et. seq. and Labor Code Section 3700 in order to do one or more of the following:

1. Develop effective risk management programs to reduce the amount and frequency of losses;

2. Share the risk of self-insured losses;

3. Jointly purchase insurance either with or without any self-insured portion underlying the insurance, and administrative and other services including, but not limited to claims adjusting, data processing, risk management, loss prevention, accounting services, actuarial services, and legal services in connection with the Programs; and

4. Provide administrative and other services including, but not limited to, claims adjusting, data processing, risk management, loss prevention, accounting services, actuarial services, and legal services in connection with the various programs.

These purposes shall be accomplished through the exercise of the powers of the Member Entities jointly in the creation and operation of the Authority.

It is also the purpose of this Agreement to provide, to the extent permitted by law, procedures for the addition, at subsequent date, of public entities to become parties to this Agreement and members of the Authority, subject to ARTICLE XV, and to provide for the removal of Member Entities for cause or upon request, subject to Articles XVI and XVII.

ARTICLE III

DEFINITIONS

In this Agreement unless the context otherwise requires:

1. **Board** or **Board of Directors** is the governing body of the Authority constituted as set forth in Article VIII of this Agreement;

2. **Governing Documents** include this Agreement, the Bylaws of the Authority, and any other document stipulated as a Governing Document in the Bylaws.

3. **Member Entity** includes each public agency which is a party to this Agreement.

4. **Program** is the specific method used to provide coverage for a risk, scope, type, or area of insurance services, including, without limitation, the funding of loss reserves, where applicable, as prescribed in a Governing Document for a specific type of coverage, and may encompass such specific areas as comprehensive general liability, property, workers' compensation, or employee benefits.

ARTICLE IV

PARTIES TO THE AGREEMENT

Each Member Entity certifies that it intends to and does contract with every other Member Entity who is a signatory to this Agreement and, in addition, with such other Member Entity as may later be added as a Member Entity under ARTICLE XV. Each Member Entity also certifies that the deletion of any Member Entity from this Agreement does not affect this Agreement nor each Member Entity's intent to contract with the Member Entities then remaining.

ARTICLE V

TERM OF AGREEMENT

This Agreement became effective as of August 15, 1986 and continues in full force until terminated in accordance with ARTICLE XIX.

ARTICLE VI

POWERS OF THE AUTHORITY

The Authority, through its Board of Directors, is authorized, in its own name, to do all acts necessary to fulfill the purposes of this Agreement referred to in ARTICLE II including, but not limited to, each of the following:

1. Make and enter into contracts;

2. Incur debts, liabilities, and obligations; but no debt, liability, or obligation of the Authority is a debt, liability, or obligation of a Member Entity;

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. Sue and be sued in its own name;

6. Employ agents and employees;

7. Acquire, construct, manage, and maintain buildings;

8. Lease real or personal property, including that of a Member Entity;

9. Receive, collect, invest, and disburse monies;

10. Issue revenue bonds or other forms of indebtedness, as provided under Government Code Sections 6500, et. seq.; and

11. Carry out other duties as required to accomplish other responsibilities as set forth in this Agreement.

These powers shall be exercised in the manner provided by applicable law and as expressly set forth in this Agreement.

ARTICLE VII

MEMBERSHIP

Membership shall be restricted to public agencies located within the State of California, or such other lesser areas as set forth in the Bylaws.

There shall be two classes of membership defined as follows:

1. Class A Member Entities shall be accepted as such by the Board of Directors and designated as Class A Member Entities on the signature page.

2. Class B Member Entities shall be accepted as such by the Board of Directors and designated as Class B Member Entities on the signature page.

Upon a Member Entity organization or re-organization, including dissolution, merger, or consolidation, which results in extinguishment or dissolution of the legal existence of a Member Entity, the rights, obligations, and liabilities of such Member Entity under this Agreement, the Bylaws, or other Governing Documents or Resolutions of the Board shall be the rights, obligations, and liabilities of the successor public entity.

ARTICLE VIII

MEMBER ENTITY RESPONSIBILITIES

Each Member Entity, regardless of its class, has the obligations and responsibilities set forth in the Governing Documents as defined in the Bylaws and any Resolution of the Board of Directors. Such responsibilities and obligations may include, but are not limited to, the following:

1. Cooperate with the Authority in determining the cause of losses and in the settlement of claims;

2. Pay all premiums, assessments, penalties, interest, and other charges promptly to the Authority when due;

3. Provide the Authority with statistical and loss experience, data, and other information as may be necessary; and

4. Cooperate with and assist the Authority and any insurer, claims adjuster, or legal counsel retained by the Authority in matters relating to this Agreement, the Authority Bylaws, any other Governing Documents, and policies and procedures adopted by the Board.

POWERS RESERVED UNTO THE MEMBERSHIP

The Member Entities retain the following powers:

1. The designation of the Board of Directors as specified in ARTICLE IX; and

2. Approval of an amendment to this Agreement as specified in ARTICLE XXIV.

ARTICLE IX

BOARD OF DIRECTORS

There shall be a Board of Directors to govern the affairs of the Authority. The Board shall be comprised of one director, and one alternate director, from each Class A Member Entity who shall have the authority to bind the Member Entity on any and all matters relating to the business of the Authority. Each director has one vote. The alternate director may cast a vote as a member of the Board of Directors only in the absence of the director. Each director shall be the chief administrative officer of each Member Entity or his or her designee. The alternate director shall be appointed by and serve at the pleasure of that Member Entity's director.

POWERS RESERVED UNTO THE BOARD

The powers of the Board are the powers of the Authority not specifically reserved to the Member Entities by this Agreement. The Board has authority to delegate its powers and authority. However, the Board shall retain unto itself the power to change the Bylaws, to expel a member by a two-thirds vote, and to establish a Program.

ARTICLE X

COMMITTEES

EXECUTIVE COMMITTEE

The Board may create an Executive Committee comprised of members of the Board and delegate one or more of its powers to the Executive Committee except those powers not delegable. An appointment to the Executive Committee, if any, is by an election of the Board of Directors.

OTHER COMMITTEES

Other committees may be created by, or in accordance with, the procedures described in the Bylaws.

ARTICLE XI

BOARD AND COMMITTEE MEETINGS

The Board shall hold at least one regular meeting each year. The Board shall fix the date, hour, and place at which each regular meeting is to be held. A special meeting may be called upon written request by the President or at least one-third of the Board members.

Each regular, adjourned regular, and special meeting of the Board, the Executive Committee, or any other Standing Committee shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act (Section 54950 et. seq. of the Government Code).

The Secretary shall keep or have kept minutes of each regular or special meeting of the Board and any Committee. As soon as possible after each meeting, the Secretary shall have a copy of those minutes forwarded to each member of the Board.

No business may be transacted by the Board or a Committee without a quorum of members being present. A quorum consists of a majority of the members.

ARTICLE XII

OFFICERS & EMPLOYEES

The Officers of the Authority are the President, Vice President, Administrator, Secretary, Treasurer, and others as may be declared in the Bylaws or Resolution of the Board. The Officers are elected or appointed in accordance with the procedures described in the Bylaws. The Officers shall have the authorities and responsibilities as defined in the Bylaws.

The Board may appoint such 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 provides or performs assigned duties pursuant to this ARTICLE may be reimbursed by the Authority for services rendered on the Authority's behalf.

ARTICLE XIII

ANNUAL AUDITS AND AUDIT REPORTS

The Treasurer shall cause an annual financial audit to be made by an independent Certified Public Accountant with respect to all Authority receipts, disbursements, other transactions and entries into the books. A report of the financial audit shall be filed as a public record with each Member Entity. The audit shall be conducted in accordance with Government Code Section 6505 and filed with the County Auditor or others as required by the laws of California. The Authority shall pay the cost of the financial audit and charge the cost against the Member Entities in the same manner as other administrative costs.

ARTICLE XIV

INDEMNIFICATION OF DIRECTORS, OFFICERS, AND EMPLOYEES

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 hereunder. The members of the Board of Directors and the officers and employees of the Authority shall be liable for any act or omission within the scope of their office or employment by the Authority as a public entity only in the event that they act or fail to act because of actual fraud, corruption, or actual malice or willfully fail or refuse to conduct the defense of a claim or action in good faith or to reasonably cooperate in good faith in the defense conducted by the Authority. No member of the Board shall be liable for any action taken or omitted by any other member of the Board. No member of the Board, officer, or employee shall be required to deposit premium on a bond or other security to guarantee the faithful performance of his or her duties hereunder, although the Authority may provide such bonds. Funds of the Authority shall be used to defend and to indemnify members of the Board, officers, and employees of the Authority for any act or omission pursuant to the provisions of Government Code Sections 910 to 996.6. The Authority may purchase insurance to provide coverage for acts or omissions of directors, officers, and employees.

The Authority shall indemnify, protect, defend, and hold harmless each and all of the Member Entities, and their officers and employees, for and from any and all liability, claims, causes of action, damages, losses, judgments, costs, or expenses (including attorney's fees) resulting from an injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement by the Authority, by one or more of the Member Entities, or any of their officers, employees, agents, or independent contractors. This indemnification provision is intended to supplant and supersede the pro rata right of contribution formula set forth in Government Code Section 895.6.

ARTICLE XV

SELF-INDEMNIFICATION AMONG THE MEMBER ENTITIES

Section 895.2 of the California Government Code imposes certain tort liability jointly upon entities solely by reason of such entities being parties to an agreement as defined in Section 895 of said Code. Therefore, the Member Entities hereto, as between themselves, pursuant to the authorization contained in Sections 895.4 and 895.6 of the California Government Code, each assumes the full liability imposed upon it for any of its officers, agents, or employees by law for injuries 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 said Code. To achieve this purpose, each Member Entity indemnifies and holds harmless all other Member Entities for any loss, cost, or expense that may be imposed upon such other Member Entities solely by virtue of Section 895.2 of the California Code.

ARTICLE XVI

NEW MEMBERS

A public agency may be admitted as a Member Entity only upon a two-thirds vote of the Board of Directors. The application of any Member Entity to participate in any Program shall be determined under the Program's Governing Documents.

Each applicant for membership shall pay all fees and expenses set by the Board.

ARTICLE XVII

WITHDRAWAL

A Member Entity may not withdraw from the Authority for a period of three (3) consecutive fiscal years after commencement of membership. After the initial three (3) year non-cancelable period, a Member Entity may withdraw from the Authority only at the end of a fiscal year, provided it has given the Authority at least six months written notice of its intent to withdraw. A notice of intent to withdraw shall be final and irreversible upon its receipt by the Authority unless the Board authorizes it to be rescinded by the Member Entity.

The withdrawal of a Member Entity from any class of membership in the Authority shall not terminate its responsibility, as defined by any of the Governing Documents of the Authority, to contribute its share of premiums or funds to any fund or coverage program created by the Authority in which the withdrawing Member Entity has participated.

ARTICLE XVIII

EXPULSION

The Authority may expel a Member Entity from any class of membership in the Authority by a two-thirds vote of the Board of Directors for a breach of any of the Governing Documents determined by the Board to be a material breach. Such expulsion shall automatically, and simultaneously, terminate the Member Entity's participation in any and all Programs in which it may be a Program participant. The procedure for hearing and notice of expulsion of a Member Entity shall be as provided in the Authority Bylaws.

The expulsion procedures from any Program shall be defined in the Governing Documents for that Program.

The expulsion of a Member Entity from any class of membership in the Authority shall not terminate its responsibility, as defined by any of the Governing Documents of the Authority, to contribute its share of premiums or funds to any fund or coverage Program created by the Authority in which the expelled Member Entity has participated.

ARTICLE XIX

TERMINATION AND DISTRIBUTION

This Agreement may only be terminated by the written consent of all Member Entities. Thereafter, this Agreement may be terminated by the written consent of two-thirds of the Member Entities. However, this Agreement and the Authority continue to exist after termination for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to conclude the obligations and affairs of the Authority.

Upon termination of this Agreement, the assets of the Authority shall be distributed and apportioned among the Member Entities that have been participants in its Programs, including those Member Entities which previously withdrew or were expelled pursuant to ARTICLES XVII and XVIII of this Agreement, as provided in the Authority Bylaws.

ARTICLE XX

NOTICES

Notice to each Member Entity under this Agreement is sufficient if mailed to its respective address on file with the Authority.

ARTICLE XXI

BINDING EFFECT OF BYLAWS AND OTHER GOVERNING DOCUMENTS

Each party to this Agreement by the execution hereof agrees to be bound by and to comply

with all of the terms and conditions of the Governing Documents, and any Resolution adopted by the Board of Directors as they now exist or may hereafter be adopted or amended.

ARTICLE XXII

ENFORCEMENT

The Authority is hereby granted authority to enforce this Agreement. In the event action is instituted by the Authority to enforce any term of any of the Governing Documents of any Program or otherwise against any Member Entity, the prevailing party shall be entitled to reasonable attorney fees and costs incurred because of said action, in addition to other appropriate relief.

ARTICLE XXIII

PROHIBITION AGAINST ASSIGNMENT

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

ARTICLE XXIV

AMENDMENTS

This Agreement may be amended if at least 85% of the total Class A Member Entities vote in favor of the amendment. A proposed amendment must be submitted to each Member Entity at least thirty (30) days in advance of the date when the Member Entity considers it. An amendment is to be effective immediately unless otherwise designated. Appendix A to the Agreement may be amended to correctly list current Member Entities without separate action by the Member Entities or the Board.

ARTICLE XXV

SEVERABILITY

If a portion, term, condition, or provision of this Agreement is determined by a court to be illegal or in conflict with a law of the State of California, or is otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions is not affected.

In witness whereof, the following parties have each executed this Agreement as amended on the dates set forth below and acknowledge their Class A membership to the Authority:

Entity:

Date: _____

Title:

Entity:

Date: _____

Title:

Entity:

Date: _____

Title:

In witness whereof, the following parties have each executed this Agreement as amended on the dates set forth below and acknowledge their Class B membership to the Authority:

Entity:

_____

Date: _____

Title:

_____

APPENDIX A

MEMBER ENTITIES AND MEMBER CLASS

City of Albany	Class A
City of Berkeley	Class A
City of Brisbane	Class A
City of Emeryville	Class A
Town of Fairfax	Class A
City of Larkspur	Class A
City of Menlo Park	Class A
City of Mill Valley	Class A
City of Monte Sereno	Class A
City of Novato	Class A
City of Piedmont	Class A
City of Pleasanton	Class A
City of Redwood City	Class A
Town of San Anselmo	Class A
Town of Tiburon	Class B
San Francisco Redevelopment Agency	Class A
City of Sausalito	Class A
Twin Cities Police Authority	Class A
City of Union City	Class A