

JOINT EXERCISE OF POWERS AGREEMENT

SOUTHERN CALIFORNIA SCHOOLS REGIONAL LIABILITY EXCESS FUND

JOINT POWERS AUTHORITY

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JOINT EXERCISE OF POWERS AGREEMENT

TO ESTABLISH, OPERATE, AND MAINTAIN A

JOINT PROGRAM

FOR LIABILITY AND PROPERTY DAMAGE PROTECTION

THIS AGREEMENT is entered into pursuant to the provisions of title 1, Division 7, Chapter 5, Article 1 (Sections 6500, et seq.) of the California Government Code, relating to the joint exercise of powers, between the public educational agencies signatory hereto, and also those which may hereafter become signatory hereto, for the purpose of operating an agency to be known and designated as "Southern California Schools Regional Liability Excess Fund, hereinafter designated as the "Authority".

WITNESSETH:

WHEREAS, it is to the mutual benefit of the parties herein subscribed and in the best public interest of said parties to join together to establish this Joint Powers Agreement to accomplish the purposes hereinafter set forth; and

WHEREAS, the development, organization, and implementation of such an Authority is of such magnitude that it is desirable for aforesaid parties to join together in this Joint Powers Agreement in order to accomplish the purposes hereinafter set forth; and

WHEREAS, the signatories hereto have determined that there is need, by public educational agencies, for a joint program for liability and property damage protection; and

WHEREAS, it has been determined by such signatories that a joint program for liability and property damage protection is of value on an individual and mutual basis; and

WHEREAS, A joint program for liability and property damage protection can adequately serve the needs of all of such signatories; and

WHEREAS, Title 1, Division 7, Chapter 5, Article 1, of the California Government Code authorizes joint exercise by two or more public agencies of any power common to them; and

WHEREAS, it is the desire of the signatories hereto to jointly provide for a joint program for liability and property damage protection for their mutual advantage and concern; and

WHEREAS, it is the desire of the signatories hereto to study and from time to time to incorporate other forms of risk management into a joint program such as that described herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL ADVANTAGES TO BE DERIVED THEREFROM, AND IN CONSIDERATION OF THE EXECUTION OF THIS AGREEMENT BY OTHER PUBLIC AGENCIES, each of the parties hereto does agree as follows:

1. CREATION OF THE JOINT POWERS ENTITY

A Joint Powers Entity, separate and apart from the public agencies signatory hereto, shall be and is hereby created and shall hereafter be designated as the Southern California Schools' Regional Liability Excess Fund (hereinafter referred to as the "Authority").

2. FUNCTIONS OF THE AUTHORITY

(a) The Authority is established for the purposes of administering this Agreement, pursuant to the Joint Powers provisions of the California Government Code, and of providing the services and other items necessary and appropriate for the establishment, operation and maintenance of a joint program for liability and property damage claims against the members of the public agencies who are members thereof, and to provide a forum for discussion, study, development and implementation of recommendations of mutual interest regarding other joint programs.

(b) The functions of the Authority are:

- (1) To provide a joint program and system, as stated in the memorandum of coverage and given to each member, for liability and property damage claims against the members of the Authority and as such, to perform, or contract for the performance of, the financial administration, policy formulation, claim service, legal representation, safety engineering, and other development as necessary for the payment and handling of all liability and property damage protection claims against members.
- (2) To pursue any member's right of subrogation against a third party when in the discretion of the Board of Directors the same is appropriate. Any and all proceeds resulting from the assertion of such subrogation rights shall accrue to the benefit of the member against which the claim is charged.
- (3) To enter into contracts.
- (4) To obtain appropriate insurance coverage as determined by the Board of Directors.
- (5) To acquire, hold, and dispose of property, real and personal, all for the purpose of providing the membership with the necessary education, study, development, and implementation of a joint program, for liability and property protection including, but not limited to, the acquisition of facilities and equipment necessary, the employment of personnel, and the operation and maintenance of a system for the handling of the joint program.
- (6) To incur debts, liabilities, and obligations necessary to accomplish the purposes of this Agreement.
- (7) To receive gifts, contributions, and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, associations, and any governmental entity.
- (8) To invest surplus reserve funds as deemed appropriate by the Board of Directors, and as subject to law.

- (9) To provide a forum for discussion, study, development, and implementation of recommendations of mutual interest regarding other joint programs.
- (10) To sue and be sued in the name of the Authority.
- (11) To perform such other functions as may be necessary or appropriate to carry out this Agreement, so long as such other functions so performed are not prohibited by any provision of law.

3. POWERS OF THE AUTHORITY

The Authority shall have the power and authority to exercise any power common to the public agencies which are parties to this Agreement, provided that the same are in furtherance of the functions and objectives of this Agreement as herein set forth. Pursuant to Section 6509 of the California Government Code, the exercise of the aforesaid powers of the Authority shall be subject to the restrictions upon the manner of exercising such powers by a public agency having the same status as a Member District or Joint Powers Authority except as otherwise provided in this Agreement.

4. TERM OF THE AGREEMENT

This Agreement shall become effective on _____. This Agreement shall continue in effect until lawfully terminated as provided herein and in the Bylaws. In the event of a reorganization of one or more of the public agencies participating in this Agreement, the successor in interest or successors in interest to the obligations of any such reorganized public agency may be substituted as a party or as parties to this Agreement.

5. BYLAWS

- (a) The Authority shall be governed pursuant to those certain Bylaws, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, and by such amendments to the Bylaws as may from time to time be adopted. Wherever in this Agreement "Bylaws" are referred to, said Bylaws shall be those set forth in Exhibit "A", as may be amended. Each party to this Agreement agrees to comply with and be bound by the provisions of said Bylaws and further agrees that the Authority shall be operated pursuant to this Agreement and said Bylaws.
- (b) Procedures for amending the Bylaws shall be as provided in the Bylaws so long as not inconsistent with this Agreement. All amendments must be approved by two-thirds (2/3) of the weighted vote of the Board of Directors before the amendment shall become effective. Such amendments shall be binding upon all members of the Authority. The effective date of any amendment will be on the first day of the next month following adoption, unless otherwise stated.

6. MEMBERSHIP IN THE AUTHORITY

- (a) Each party to this Agreement must be eligible for membership in the Authority as defined in the Bylaws and shall become a member of the Authority on the effective date of this Agreement, except as provided herein below. Each party, which becomes a member of the Authority shall be entitled to the rights and privileges of, and shall be subject to the obligations of, membership as provided in this Agreement and in the Bylaws.

- (b) Upon approval of two-thirds (2/3) of the vote of the Executive Committee, any school district, community college district, county superintendent of schools or board of education, regional occupational center or program, Joint Powers Authority comprised solely of public educational entities, or other public educational agency that is not a party hereto but that desires to join the Authority created hereby, may become a member hereof by executing a copy of this Agreement whereby said school district, community college district, county superintendent of schools or board of education, regional occupational center or program, Joint Powers Authority comprised solely of public educational entities, or other public educational agency agrees to comply with the terms of this Agreement and of the Bylaws effective as of the date of such execution.

7. WITHDRAWAL FROM OR TERMINATION OF MEMBERSHIP

- (a) Any party to this Agreement, which has completed two complete years as a member of the Authority, may voluntarily terminate this Agreement as to itself and withdraw from membership in the authority. Such termination and withdrawal of membership shall become effective subject and according to the conditions, manner and means set forth in the Bylaws.
- (b) A member may be involuntarily terminated from the Authority upon a two-thirds (2/3) of the weighted vote of all the remaining members of the Board of Directors, as provided by the Bylaws. Such removal from membership shall operate to terminate the Agreement as to such party.

8. TERMINATION OF AGREEMENT

This Agreement may be terminated effective at the end of any fiscal year by the affirmative vote of three-fourths (3/4) of the members of the Authority; provided, however, that the Authority and this Agreement shall continue to exist for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to conclude the affairs of the Authority.

9. DISPOSITION OF PROPERTY AND FUNDS

- (a) In the event of the dissolution of the Authority, the complete rescission, or other final termination of this Agreement by all public agencies then a party hereto, any property interest remaining in the Authority following a discharge of all obligations shall be disposed of as provided for by the Bylaws.
- (b) In the event a member withdraws from this Agreement, any property interest of that member remaining in the Authority following discharge of all obligations shall be disposed of as provided for by the Bylaws.
- (c) "Obligations," as referred to herein, shall include, but not be limited to, all payments required by law, together with all reserves which have been established for the purpose of paying incurred claims together with any other legal obligations incurred by the Authority pursuant to this Agreement.

10. AMENDMENTS

This Agreement may be amended at any time with a subsequent written agreement signed by three-fourths (3/4) of the members of the Authority. Any such amendment shall be effective upon the date of final execution thereof, unless otherwise provided in this amendment.

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

12. LIABILITY

- (a) Pursuant to the provisions of Sections 895, et seq., of the California Government Code, the members are jointly and severally liable upon any liability which is otherwise imposed by law upon any one of the members or upon the Authority for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement.

If a member or the Authority is held liable upon any judgment for damages caused by such an act or omission and makes payments in excess of its pro rata share on such judgment, such member or the Authority is entitled to contribution from each of the other members that are parties to the Agreement. A member's pro rata share shall be determined in the same manner as for the disposition of property and funds as provided in the Agreement and the Bylaws.

- (b) The Authority may insure itself, to the extent deemed necessary or appropriate by the Board of Directors, against loss, liability, and claims arising out of or connected with this Agreement.

13. ENFORCEMENT

The Authority is hereby given authority to enforce this Agreement. In the event suit is brought upon this Agreement by the Authority and judgment is recovered against a member, the member shall pay all costs incurred by the Authority, including reasonable attorney's fees as fixed by the court.

14. DEFINITIONS

Unless the context requires otherwise, the terms used herein and in the By-Laws shall have the following meanings:

- (a) "Authority" shall mean the California Schools Regional Liability Excess Fund created by this Agreement.
- (b) "Board of Directors" shall mean the governing board of the Authority established by the Bylaws to direct and control the Authority.
- (c) "Claims Adjuster" shall mean a claim adjuster as may be engaged by the Board of Directors for the purpose of determining losses and payments with respect to the Claims Fund.
- (d) "Contribution" shall mean money paid by a member to the Authority.
- (e) "Executive Committee" shall be the committee established by the Bylaws to conduct the business of the Authority.
- (f) "Liability" shall mean comprehensive general liability, property damage liability, automobile liability, personal injury liability, and errors and omissions liability as further defined in the memorandum of coverage.

- (g) "Loss Reports" shall mean a report showing a member's liability and property damage claims in detail including current status.
- (h) "Member" shall mean an individual school district, community college district, regional occupational center or program, the county board of education or county superintendent of schools, or joint powers authority comprised solely of public educational agencies which belong to the Authority.
- (i) "Memorandum of Coverage" shall mean the document stating the type of program and the scope of liability and property damage protection coverage as adopted by the Board of Directors.
- (j) "Public Educational Agency" shall mean a school district, community college district, regional occupational center or program, county board of education or superintendent of schools or joint powers authority comprising solely of public educational agencies.
- (k) "Property Damage" shall mean damage to real or personal property owned or held by a member as further defined in the memorandum of coverage.
- (l) "Reserves" shall mean those parts of member contributions held by the Authority to make future liability and property damage payments as respects to claims that have been incurred but are unpaid.
- (m) "Joint Program" shall mean the group purchasing of Insurance, or the pooled purchase of Excess Insurance with the setting aside of funds and reserves to pay for a self-insured retention or for losses not covered by insurance.
- (n) "Pro-Rata Share" shall mean each member's financial contribution in proportion to the total of all members' contributions for each fiscal year.
- (o) "Weighted vote" shall mean the votes allocated to the members of the Authority pursuant to the Bylaws.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized officers thereunto duly authorized as set forth herein below.

Name of Entity: _____

Date: _____

Signature: _____

Print Name: _____

Title: _____