

JOINT POWERS AGREEMENT
SOUTH BAY AREA SCHOOLS INSURANCE AUTHORITY

TABLE OF CONTENTS

1. Creation of the Joint Powers Entity
2. Powers and Manner of Exercising Them
3. Accounting and Accountability
4. Term of the Agreement
5. Bylaws
6. Membership in the Authority
7. Withdrawal from or Termination of Membership
8. Termination of Agreement
9. Surplus Reserve Funds
10. Disposition of Property and Funds
11. Amendments
12. Severability
13. Liability
14. Enforcement
15. Definitions
16. Counterparts

JOINT POWERS AGREEMENT
TO ESTABLISH, OPERATE, AND MAINTAIN
A SELF-INSURANCE PROGRAM
FOR LIABILITY AND PROPERTY DAMAGE PROTECTION

Original Adoption Date: April 1, 1985
As Amended: December 1, 2016

THIS AGREEMENT is entered into pursuant to the provisions of Title I, Division 7, Chapter 5, Article I (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 “South Bay Area Schools Insurance Authority” hereinafter designated as the “Authority.”

WITNESSETH:

WHEREAS, it is to be the mutual benefit of the parties herein subscribed and in the best public interest of said parties to join together to establish this Joint Power 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, it has been determined by such signatories that self-insurance for liability and property damage protection is of value on an individual and mutual basis; and

WHEREAS, a self-insurance system for liability and property damage protection can adequately serve the needs of all 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 study and possibly incorporate other forms of risk management into a self-insurance 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 EDUCATION 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 educational agencies signatory hereto, shall be and is hereby created and shall hereafter be designated as the “South Bay Area Schools Insurance Authority” (hereinafter referred to as the “Authority”).

2. POWERS AND MANNER OF EXERCISING THEM

(a) General.

The Authority is established for the purposes of administering this Agreement, pursuant to the Joint Powers provisions of the California Government Code, and to provide the services and other items necessary and appropriate for the establishment, operation, and maintenance of a self-insurance program for liability and property damage claims against the public educational agencies who are members thereof, and to provide a forum for discussion, study, development, and implementation of recommendations of mutual interest regarding other programs of self-insurance. The Authority shall have the power and authority to exercise any power common to the public educational agencies which are parties to this Agreement, providing 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 educational agency having the same status as the public entities participating in the Authority, except as otherwise provided in this Agreement, and the designated member entity shall be: Santa Clara Unified School District.

(b) Powers. The powers of the Authority include but are not limited to:

(1) To provide a self-insurance plan 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. Said payment and handling for any member shall be for all liability and property damage claims filed and arising out of facts occurring during the period of membership in the Authority. The Authority shall not pay or handle for a member any liability and property damage protection claims which arise out of facts occurring before membership or after termination of membership in this Authority.

(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 district against which the claim is charged.

- (3) To enter into contracts.
- (4) To obtain primary and/or excess insurance coverage in the amount to be 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 self-insurance 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 self-insurance plan.
- (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.
- (9) To provide a forum for discussion, study, development, and implementation of recommendations of mutual interest regarding other programs of self-insurance.
- (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 federal, state, or local law and not otherwise inconsistent with the terms of this agreement.
- (12) Pursuant to Government Code Section 6509, the Authority shall be restricted in the exercise of its powers in the same manner as the Santa Clara Unified School District.

3. ACCOUNTING AND ACCOUNTABILITY

The Authority shall be strictly accountable for all funds received and disbursed by it and, to that end, shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles, or by any provision of law or any resolution or policy of the Authority. Pursuant to Government Code 6505.6, the Board of Directors may appoint one of its officers or employees to either or both the position of Treasurer and Auditor.

4. TERM OF THE AGREEMENT

This Agreement shall become effective on April 1, 1985; except that the self-insurance plan for liability and property damage claims against members of the Authority shall become operative on a date specified by the Bylaws. 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 educational agencies participating in this Agreement, the successor in interest or successors in interest to the obligations of any such reorganized public educational agency may be substituted as a party or as parties to this Agreement, with the express consent and approval of the other participating school districts.

5. BYLAWS

(a) The Authority shall be governed pursuant to those certain Bylaws, and by such amendments to the Bylaws as may from time to time be adopted. 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 they are not inconsistent with this Agreement. All amendments must be approved by members of the Board of Directors before the amendment shall become effective. Such amendments shall be binding upon all members of the Authority. An amendment shall specify the date upon which it becomes effective.

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 the approval of a majority of the Board of Directors of the then members of the Authority, any school district, community college district, county superintendent of schools or board of education, regional occupation center or program, 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, 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 three complete consecutive years as a member of the Authority may voluntarily rescind this Agreement and terminate its membership in the Authority, provided it gives notice of its intention to withdraw in the manner and subject to the conditions set forth in the Bylaws. Provided, however, termination by any party or parties involving less than a majority under Section 8 shall not be construed as completion of the purpose of the Agreement and shall not require the return to the terminating party or parties of all or any part of contributions, advances or payments made. Withdrawn members shall not be eligible to reapply for membership for three years following the effective date of their withdrawal.

8. TERMINATION OF AGREEMENT

This Agreement may be terminated effective any June 30 by the affirmative vote of a majority of the public educational agencies then 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. After the completion of the purpose of this Agreement any surplus money on hand shall be returned in proportion to the contributions made and the claims or losses paid.

9. SURPLUS RESERVE FUNDS

The Authority may invest surplus reserve funds in the same manner and with the same limitations as placed upon participating member school districts under the California Education Code and other applicable laws.

10. 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 educational 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 in section 8.

(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 attributable to that member and its officers and employees shall be retained by the Authority until completion of the purposes of this Agreement.

(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 claims together with any other legal obligations incurred by the Authority pursuant to this

Agreement.

(d) Upon withdrawal of a member the Board shall establish one or more reserve accounts to fund the disposition of actual and potential claims against that member, using funds supplied by the withdrawing member.

11. AMENDMENTS

This Agreement may be amended at any time with a subsequent written agreement signed by a majority of the public educational agencies then members of the Authority. Any such amendment shall be effective upon the date of final execution thereof, unless otherwise provided in this amendment.

12. 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.

13. 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 of 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. Said insurance to be purchased in the name of the Authority for the benefit of the Authority and the participating public agencies.

14. ENFORCEMENT

The Authority is hereby given authority to enforce this Agreement. Any dispute between the Authority and a member or members shall be resolved by binding arbitration pursuant to

Code of Civil Procedure section 1280 et seq., with the non-prevailing party responsible for the arbitrators fee, but with each side to otherwise bear all of its own costs and fees

15. DEFINITIONS

Unless the context requires otherwise, the terms used herein shall have the following meanings:

(a) “Authority” shall mean the South Bay Area Schools Insurance Authority 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) “Bylaws” shall mean the rules, policies and procedures adopted by the Authority and its members in order to implement this Agreement.

(d) “Claims Adjuster” shall mean a claims adjuster as may be engaged by the Board of Directors for the purpose of determining losses and payments with respect to the Claims Fund.

(e) “Contribution” shall mean money, including, but not limited to, deposit premiums and special assessments, paid by a member to the Authority in return for the handling of liability and property damage claims.

(f) “Liability” shall mean comprehensive general 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 members 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, or the county board of education or county superintendent of schools which belongs to the Authority.

(i) "Memorandum of Coverage" shall mean the document stating the scope of liability and property damage protection coverage as adopted by the Board of Directors. Unless otherwise provided by action of the Board the memorandum of coverage shall follow form with the terms of the then applicable excess insurance policy.

(j) "Public Educational Agency" shall mean a school district, community college district, regional occupational center or program, or county board of education or superintendent of schools.

(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 that part of the members contribution held by the Authority to make future liability and property damage payments as respects claims that have been incurred but are unpaid.

(m) "Self-Insurance" shall mean setting aside funds and reserves to pay for losses not covered by insurance.

16. COUNTERPARTS

This Agreement may be executed in counterparts and thereupon shall be effective to the same extent as if said signatures were obtained simultaneously on the same page.

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.

District:

Date:

By:

Title: