

TRI-COUNTY SCHOOLS INSURANCE GROUP

AMENDED

JOINT POWERS AGREEMENT
FOR THE OPERATION OF COMMON
RISK MANAGEMENT AND RISK POOLING PROGRAMS

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Amended
Joint Powers Agreement
For The Operation Of Common
Risk Management And Risk Pooling Programs

This Joint Powers Agreement (“Agreement”) amends the TRI-COUNTY SCHOOLS INSURANCE GROUP Joint Powers Agreement dated November 13, 1986, as subsequently amended. This Agreement supersedes any prior joint powers agreement among the contracting parties (“Members” or “Member”) and becomes effective at 12:01 a.m. on (i) the day following the date of its approval by all the Members, or (ii) the day following the close of the fiscal year in which it is approved by a majority of the Members, whichever occurs first.

This Agreement is entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (commencing with Section 6500) of the California Government Code, as amended (“Joint Powers Act”), relating to the joint exercise of powers among the public agencies (referred to as “public agencies”) that are parties to this Agreement and those that hereafter become parties to it, for the purpose of operating an agency known as “TRI-COUNTY SCHOOLS INSURANCE GROUP”.

WITNESETH

WHEREAS, Sections 35208 and 72506 of the California Education Code, as amended, requires that school and community college districts insure against certain risks set forth therein; and

WHEREAS, Sections 35214 and 72506 of the California Education Code, permits school and community college districts to purchase insurance or self-insure against the risks set forth in California Education Code Section 35208 and 72506; and

WHEREAS, Sections 17565 and 81601 of the California Education Code, as amended, permit school and community colleges, to insure property against other peril; and

WHEREAS, Sections 17566 and 81602 of the California Education Code, as amended, permit school and community college districts to establish a fund or funds for the purpose of covering the purchase of excess insurance, the deductible amount under deductible types of insurance policies, losses or payments arising from self-insurance programs, losses or payments due to non-insured perils, payment of losses, administrative costs and related services; and

WHEREAS, Sections 17567 and 81603 of the California Education code, as

amended, permit any two or more school and community college districts to enter into a joint powers agreement pursuant to the Joint Powers Act. to perform the functions set out in California Education Code sections 17565, 17566, 81601 and 81602; and

WHEREAS, Section 3700(c) of the California Labor Code, as hereinafter amended, permits a public entity to fund its own workers' compensation losses; and

WHEREAS, Section 990 of the California Government Code, as hereinafter amended, permits local public entities to insure against liability and other losses; and

WHEREAS, Section 990.4 of the California Government Code, as hereinafter amended, permits local public entities to purchase insurance or self-insure against the risks set forth in Government Code Section 990; and

WHEREAS, Section 990.8 of the California Government Code, as hereinafter amended, permits two or more local public entities to enter into a joint powers agreement pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7, Title 1 of the California Government Code, to perform the functions set out in Government Code Section 990; and

WHEREAS, Article 1 (commencing with Section 6500) of Chapter 5 of Division 7, Title 1 of the California Government Code permits two or more public agencies to join or exercise any power common to them; and

WHEREAS, the signatories hereto have determined that there is a need by public agencies to develop (i) effective risk management programs to reduce the amount and frequency of their losses and (ii) self-insurance, i.e., permissibly uninsured, programs for the purpose of protecting against various risks jointly, rather than individually; and

WHEREAS, it is the desire of the signatories hereto to jointly provide for risk sharing for their mutual advantage and concern; and

WHEREAS, the development, organization and implementation of a joint powers authority is of such magnitude that it is desirable for the parties to join together in this Agreement in order to accomplish the purposes hereinafter set forth; and

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

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

WHEREAS, each signatory hereto has determined that it is economically practical and for its public benefit and in its public interest to do so;

NOW, THEREFORE, for and in consideration of all of the mutual benefits, covenants and agreements contained in this Agreement, the parties hereto agree as follows:

ARTICLE 1

Creation of the Joint Powers Entity

1.1 A joint powers authority, separate and apart from the public agencies that are parties to this Agreement, shall be and is hereby created and is designated as the TRI-COUNTY SCHOOLS INSURANCE GROUP (“Authority”).

1.2 The governing bodies of the Authority shall be its board of directors (“Board of Directors”) and executive committee (“Executive Committee”). The Board of Directors and Executive Committee shall be constituted and empowered as provided in the Bylaws of the Authority.

ARTICLE 2

Purpose of the Authority

2.1 The Authority is established for the purposes of administering this Agreement and for jointly exercising powers common to each Member by:

2.1.1 Pooling on a self-insured, i.e., permissibly uninsured, basis various risks in excess of individually selected deductible amounts and up to a jointly selected maximum;

2.1.2 Jointly purchasing insurance coverage over the self-insured, i.e., permissibly uninsured, maximum;

2.1.3 Creating and maintaining loss funds to pay the costs of self-insurance, i.e., permissibly uninsured, portions of covered losses;

2.1.4 Implementing a risk management program;

2.1.5 Providing a forum for discussion, study, development and implementation of recommendations of mutual interest regarding self-funded insurance, i.e., permissibly uninsured, risk management and other programs, as more specifically provided for in the Bylaws; and

2.1.6 Providing for the future inclusion of additional public agencies which desire to become parties to this Agreement.

ARTICLE 3

Powers of the Authority

3.1 The Authority shall have the power and authority to exercise (i) any power common to the public agencies which are parties to this Agreement, (ii) any powers contained in the Joint Powers Act, or any successor statute, and (iii) powers otherwise conferred by law; provided that the power is in furtherance of the purposes, functions and objectives of this

Agreement. Pursuant to Section 6509 of the California Government Code, the Authority in exercising its powers shall be subject to the same restrictions as are imposed upon public education agencies, except as otherwise provided by statute.

ARTICLE 4

Functions of the Authority

4.1 The functions of the Authority are:

4.1.1 To provide on behalf of the Members of the Authority a self-insurance, i.e., permissibly uninsured, plan and system for any risk or peril and any program authorized by law and deemed practical by the Board of Directors and as such, to perform, or contract for the performance of, financial, administration, policy formulation, loss servicing, legal representation, safety engineering, health education and other services as necessary or appropriate for the payment and handling of all claims of loss, and the performance of all administrative functions, for each program approved by the Board of Directors.

4.1.2 To provide risk pooling through independent programs for such risks or perils as the Board of Directors determines are in the best interest of the Authority and are permitted by law.

4.1.3 To pursue any member's right of subrogation against a third party when in the discretion of the Board of Directors such action is appropriate. Any recovery resulting from pursuing a subrogation claim shall be divided between the Authority and member district against which the underlying loss was charged in proportion to each authorized payment made toward resolution of the underlying loss.

4.1.4 To make and enter into contracts.

4.1.5 To acquire, hold or dispose of real and personal property in the name of the Authority.

4.1.6 To incur debts, liabilities and obligations, including but not limited to issuing bonds as allowed by law, necessary to accomplish the purposes of the Agreement.

4.1.7 To receive gifts, contributions, and donations of property, funds, services, or other forms of assistance from members, firms, persons, corporations, associations, and any other governmental entity in accordance with existing laws.

4.1.8 To invest surplus funds as permitted by law.

4.1.9 To acquire, construct, manage, maintain and operate buildings.

4.1.10 To sue and be sued in the name of the Authority.

4.1.11 To maintain accurate case records for all covered risks and accurate records of all losses paid.

4.1.12 To join joint powers authorities to provide services or coverage to this Authority.

4.1.13 To lease real or personal property, including that of a Member.

4.1.14 To employ staff to perform the functions of the Authority.

4.1.15 To perform such other functions as may be necessary or appropriate to carry out the Agreement, so long as such other functions so performed are not prohibited by any provision of law and are not otherwise inconsistent with this Agreement or the Bylaws.

ARTICLE 5

Term of the Agreement

5.1 This amended Agreement shall become effective at 12:01 a.m. on (i) the day following the date as of which all of the Members of the TRI-COUNTY SCHOOLS INSURANCE GROUP approve this amended Agreement, or (ii) the day following the close of the fiscal year in which a majority of the Members approve this amended Agreement, whichever occurs first.

5.2 This amended Agreement shall continue in effect until lawfully terminated as provided herein and in the Bylaws.

ARTICLE 6

Bylaws

6.1 The Authority shall be governed pursuant to the bylaws, a copy of which was attached as Exhibit "A" to the original Joint Powers Agreement dated November 13, 1986, as amended from time to time (the "Bylaws"). Each party to this Agreement agrees to comply with and be bound by the provisions of the Bylaws and further agrees that the Authority shall be operated pursuant to this Agreement and the Bylaws.

6.2 The Bylaws may be amended by a majority vote of the authorized number of directors of the Board of Directors or by a two-thirds (2/3) vote of the authorized number of members of the Executive Committee when a quorum of the Board of Directors is not available; provided, however, any amendment of the Bylaws by the Executive Committee shall be effective only after notice of the action is given to the Board at Directors as provided in the Bylaws and no request for reconsideration by the Board of Directors is timely made pursuant to the procedure set out in the Bylaws.

ARTICLE 7

Membership

7.1 Any public agency desiring to become a party to this Agreement must be eligible for membership in the Authority, as specified in the Bylaws.

7.2 Each party which becomes a Member of the Authority shall be entitled to the rights and privileges and subject to the obligations of membership, as provided in this Agreement, the Bylaws and by statute.

7.3 Each party to this Agreement shall be referred to as a “Member” of the Authority.

ARTICLE 8

Termination of Agreement

8.1 Should all parties to this Agreement withdraw as Members of the Authority or be involuntarily terminated from the Authority, this Agreement shall terminate and the Authority shall dissolve; except that the Authority shall continue to exist for the purpose of disposing of all claims of loss, distributing its assets, and performing all other functions necessary to windup its affairs.

ARTICLE 9

Disposition of Property and Funds

9.1 In the event of the termination of this Agreement and the dissolution of the Authority, any assets that remain in the Authority following a discharge of all of the Authority’s obligations shall be disposed of as provided in the Bylaws.

9.2 “Obligations,” as referred to herein, shall include, but not be limited to, all payments required by law, together with all reserves established for the purpose of paying liability losses and related loss costs, together with any other legal obligations incurred by the Authority pursuant to this Agreement.

9.3 In the event a Member withdraws from the Authority or has its membership in the Authority involuntarily terminated, that Member’s interest in the assets of the Authority shall be determined as set forth in the Bylaws.

ARTICLE 10

Investment of Surplus Funds

10.1 The Authority shall have the power to cause such surplus funds as are not necessary for the immediate operation of the Authority to be invested in compliance with Section 6509.5 of the California Government Code in such investments as are permitted by law.

10.2 Should the Authority complete its purposes as set forth herein, any available surplus funds shall be returned to the Members in proportion to the Members' individual contributions to the Authority in the manner prescribed by the Bylaws.

ARTICLE 11

Amendment

11.1 This Agreement, and all subsequent amendments, may be amended by the by the written consents of at least a majority of the Members approving the amendment. Any such amendment shall be effective and binding upon all Members of the Authority at 12:01 a.m. on (i) the day following the date of approval of the amendment by all the Members, or (ii) the day following the close of the fiscal year in which a majority of the Members approve the amendment, whichever occurs first. The failure of a member to abide by any amendment may result in involuntary termination as provided in the Bylaws.

ARTICLE 12

Severability

12.1 Should any portion, term, condition or provision of this Agreement be decided by court of competent jurisdiction to be illegal or in conflict with any laws 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.

ARTICLE 13

Liability and Indemnification

13.1 Except as otherwise provided in this Article, the debts, liabilities and obligations of the Authority are those of the Authority and do not constitute the debts, liabilities, or obligations of any Member.

13.2 Pursuant to the provisions of Section 895 et seq., of the California Government Code, the members of the Authority are jointly and severally liable for 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. However, as between the Members themselves, if a Member of the Authority is held liable for any such liability and pays in excess of its pro rata share in satisfaction of any such liability, such Member is entitled to contribution from the other Members of the Authority. A Member's pro rata share shall be based on that Member's contribution rate for the fiscal year in which the liability arose compared with the contribution rates of all the Members in such fiscal year. No Member may be compelled to make contribution beyond its own pro rata share of the entire liability.

13.3 The tort liability of the Authority, all members of the Board of Directors and its Executive committee, and all officers and employees of the Authority, shall be controlled by the provisions of Division 3.6 of Title I or the California Government Code.

13.4 This Agreement creates a risk pooling arrangement for each program and services operated and maintained by the Authority. Accordingly, as to each such program, each Member participating in that program agrees to be liable for its pro rata share of all losses, debts and liabilities of that program arising or incurred while it is a participant in that program. The members of the program agree to indemnify and hold harmless any member of the program for any liability, cost or expense that may be imposed upon a member of that program in excess of the pro rata liability of that member. If a program or the Authority is liable for any loss, debt or liability in excess of the reserves held by the Authority, the Members participating in that program may be assessed an additional contribution to cover such excess liability. A Member's pro rata contribution for such excess liability shall be based on that Member's contribution rate for the fiscal year in which the liability arose or was incurred compared with the contribution rates of all the Members participating in the program in such fiscal year.

13.5 The Authority may insure itself against liability and claims of loss arising out of or connected with this Agreement to the extent deemed necessary by the Board of Directors.

ARTICLE 14

Enforcement

14.1 The Authority is given the power to enforce this Agreement. In the event suit is brought under this Agreement by the Authority and judgment is recovered against a Member, the Member shall pay all costs incurred by the Authority, including actual attorney's fees as determined by the court.

ARTICLE 15

Filing with the Secretary of State

15.1 A notice satisfying the requirements of Section 6503.5 of the California Government Code shall be filed with the office of the Secretary or State no later than thirty (30) days following the date this Amended Agreement becomes effective.

This Agreement may be executed in counterparts.

[Signature on page 9.]

IN WITNESS WHEREOF, THE PARTY DESIGNATED BELOW HAS EXECUTED THIS JOINT POWERS AGREEMENT FOR THE OPERATION OF A COMMON RISK MANAGEMENT AND RISK POOLING PROGRAM BY ITS AUTHORIZED OFFICER. THIS AGREEMENT MAY BE EXECUTED IN COUNTERPARTS.

NAME OF PUBLIC ENTITY: _____

DATED: _____

By: _____

Its: Authorized Officer

Name: _____

[Please Type or Print]

Clerk

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