

FIRST AMENDED
JOINT EXERCISE OF POWERS AGREEMENT
TO ESTABLISH, OPERATE, AND MAINTAIN
INSURANCE PROGRAMS AND
HEALTH AND WELFARE BENEFIT PROGRAMS

RECITALS

WHEREAS Education Code sections 17565-17567, 35208, 35214, 72506 and 81601-81603 authorize public education entities to operate self-insurance programs and engage in pooling and joint purchase of insurance for a variety of risks including property, casualty, liability, and workers compensation, and for the provision of various health and welfare benefits, and further authorize public education entities to enter into joint exercise of powers agreements for these purposes;

WHEREAS the Contra Costa County Schools Insurance Group was formed in 1977 as a separate public agency for the purpose of operating a self-insurance program for workers compensation insurance, pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (sections 6500 et seq.) of the California Government Code by, between and among the signatory governing boards of the school districts, community college district, and county office of education located in Contra Costa County;

WHEREAS in 1995 the members of the Group adopted a superceding Joint Exercise of Powers Agreement to Establish, Operate, and Maintain a Self-Insurance Program for Workers Compensation, to permit the in-house administration of workers compensation claims through the services of an Executive Director and staff employed by the Group;

WHEREAS the members of the Group now desire to amend this Agreement to permit the members to jointly exercise their powers to self-insure, pool, and jointly purchase insurance for a variety of risks and to provide various health and welfare benefits in addition to workers compensation coverage, and to permit the creation and in-house administration of programs for such additional insurance and benefits;

WHEREAS the members of the Group now desire to amend this Agreement to provide that the Group shall be primarily governed by its Executive Committee and to ensure that at least two-thirds of the members of the Executive Committee shall be representatives from the school districts, community college district, and county office of education located in Contra Costa County;

NOW, THEREFORE, for and in consideration of the mutual benefits, covenants and agreements set forth herein, the parties agree:

AGREEMENT

1. **Legal Authority.** The signatory governing boards of school districts, governing boards of community college districts, and county superintendent(s) of schools (hereafter “districts” or “members”) enter into this agreement pursuant to the provisions of Title I, Division 7, chapter 5, Article 1 (Sections 6500) of the California Government Code, relating to the joint exercise of powers, to sections 990.4 and 990.8 of the Government Code, permitting local public entities to insure themselves through self-insurance which shall not be subject to regulation under the Insurance Code, and to sections 17565-17567, 35208, 35214, 72506 and 81601-81603 of the California Education Code, permitting the joint exercise of powers by public education entities, to operate self-insurance programs, and provide for other insurance coverages and insurance related services and health and welfare benefits.

2. **Purpose of the Amendment.** The parties hereby amend the Joint Exercise of Powers Agreement to Establish, Operate, and Maintain a Self-Insurance Program for Workers Compensation adopted in 1995 for the following purposes: 1) to permit the Members to jointly exercise their powers to self-insure, pool and jointly purchase insurance for a variety of risks in addition to workers’ compensation; 2) to permit the Members to jointly exercise their powers to self-insure, pool and jointly purchase insurance and fund health and welfare benefits; 3) to permit the creation and in-house administration of programs for such additional insurance and benefits; 4) to provide that the Contra Costa County Schools Insurance Group shall be primarily governed through its Executive Committee and to establish the composition of that committee. The following sections of the Joint Exercise of Powers Agreement adopted in 1995 have been amended: 1-10; 14-15. The following sections have been amended and renumbered: 16-19; 21; 23-24; 29-30. The following sections have been renumbered: 20; 25-27. The following sections have been added: 22, 28, 31. To the extent that there is any conflict between the language of the superceding Joint Exercise of Powers Agreement adopted in 1995 and the language of the amendments herein, the language of this First Amended Joint Exercise of Powers Agreement shall control.

3. **Term of the Agreement.** This First Amended Joint Exercise of Powers Agreement shall be effective when approved in accordance with section 26 below and shall continue in effect until lawfully terminated.

4. **Creation of Separate Agency.** The districts have created a public agency, separate and apart from the parties hereto, designated as the Contra Costa County Schools Insurance Group (hereafter “Agency”.)

5. **Purpose.** The Agency has the following purposes:

a. To provide to the members the capabilities of self-insurance, pooling and joint purchase of insurance, provision of other insurance coverages, and self-insurance administration, for risks including but not limited to workers compensation, liability, property damage, fire damage; and for provision of health and welfare benefits including but not limited to medical, dental, and vision; and for establishment and maintenance of funds to pay for desired insurance coverages, self-insurance and benefits.

b. To provide a self-insurance program covering all workers’ compensation and related employer’s liability claims against members or the Agency, including the administration and payment of all workers compensation and related employers’ liability claims filed against a member under the laws of the State of California arising out of incidents occurring during the period of its membership in the Agency and participation in the Workers Compensation/Related Employers Liability Program.

c. As to all programs created pursuant to this agreement, to perform or contract for the performance of the financial administration, policy formulation, claim adjustment and administration and payment, legal representation, safety engineering, evaluation and determination of new members, and risk management and other services as may be appropriate and/or necessary for a program or required by law.

d. To administer and provide for payment of all workers' compensation and related employers' liability claims filed against the Agency by employees of the Agency under the laws of the State of California arising out of incidents occurring during the existence of the Agency.

e. To join other Joint Powers Authorities to provide services or coverage to this Agency.

f. To enter into contracts to provide services to other public entities when such services are currently provided by the Agency to its members.

6. **Exclusions Applicable to Workers Compensation Program.**

a. The Agency shall not pay or handle for a member any workers' compensation or employer's liability claim which arises out of incidents occurring before such member's participation in the Workers Compensation/Related Employer's Liability Program commences or after such member's membership in the program terminates.

b. The Agency shall not pay for a member of the Workers Compensation/ Related Employers Liability Program any award on account of:

1. serious and willful misconduct of the member; or
2. the member's knowing employment of an employee in violation of law; or
3. the member's knowing failure to comply with a health and safety law or regulation; or
4. in violation of the workers' compensation law: the member's discharge, coercion, or discrimination against any employee; or
5. the member's knowing violation or failure to comply with any workers' compensation law.

c. The Agency shall not pay for a member the cost of providing difference pay or any other employment benefits or liabilities other than workers' compensation or related employer's liability, to which the member's employees are entitled under the California Education Code.

d. The Agency shall not handle or reimburse a member for the costs of defending any suit or claim other than for workers' compensation or related employer's liability.

e. The Agency shall not handle, or reimburse a member for the costs of defending, any suit or claim for workers' compensation or related employer's liability filed by an employee against the member for:

1. serious and willful misconduct; or
2. discrimination, coercion or discharge of an employee in violation of the worker's compensation law; or
3. injury to an employee whom the member has knowingly illegally employed at the time of the injury; or
4. failure to comply with a health or safety law or regulation, when the member knowingly failed to comply; or
5. failure to comply with a workers' compensation law, when the member knowingly failed to comply.

7. **Powers and Programs of the Agency.** The Agency shall have the powers, common to its members, to obtain and maintain workers' compensation coverage and related employers' liability coverage and other insurance coverages; to operate a self-insurance program for workers' compensation and related employers' liability as set forth in this agreement ; to operate other self-insurance programs; to operate health and welfare benefit programs; to engage in, and operate programs for various types of insurance coverages, including but not limited to pooling and joint purchase of insurance; to contract to provide Agency services to other public entities.

The Agency is authorized to do all acts necessary for the exercise of said common powers, including but not limited to the following: to make and enter into contracts; to employ agents and employees; to incur debts, liabilities, and obligations necessary to accomplish the purposes of this agreement; to acquire, hold, or dispose of real and personal property; to acquire, construct, manage, maintain, and rent buildings and other improvements; to receive gifts, contributions, and donations of property, funds, services, and other forms of assistance; to receive, accept and utilize the services of personnel, and property, real or personal, offered by any of the members, their representatives or agents; to receive, accept, and expend funds by contract or otherwise for purposes consistent with this agreement, which funds may be provided by any of the members or their representatives or agents; to pursue any member's right of subrogation against a third party; to sue and be sued in its own name; and to exercise any other power common to the parties hereto which is in furtherance of the purpose of this agreement. These powers shall be exercised in the manner provided by law, and except as otherwise provided herein, shall be subject only to such restrictions upon the manner of exercising such powers as are imposed on a county superintendent of schools or county board of education in the exercise of similar powers.

8. **Board of Directors.**

a. Composition: The Agency shall have a board of directors (hereafter "Board") composed of one director appointed by each member. Each member shall appoint one (1) principal appointee, who will be known as a "director". Each member shall name a first alternate and may name a second alternate. An alternate shall have the authority to attend, participate in, and vote at any meeting of the Board when the director is absent. Each director or alternate(s) shall serve at the pleasure of the respective appointing member.

b. Each director shall have one vote on the Board.

c. Powers and duties: The Board is empowered to:

1. As to each program, upon the recommendation of the Executive Committee, provide for additional assessments to program members during the year, if necessary, to allow for increased cost of the insurance or self-insurance due to changes in the law or claims costs or for the increased cost of program administration. As to each program, upon the recommendation of the Executive Committee, declare dividends for program members and as provided in the bylaws specify the method of distribution of dividends.

2. Provide for and implement the existing Workers Compensation/Related Employers Liability Program; provide for and implement other self-insurance programs; provide for other types of insurance coverages including but not limited to pooling programs and joint purchase of insurance programs, or combinations thereof, as permitted by law; provide for and implement health and welfare benefit programs.

3. Provide for the administration of workers' compensation and related employer's liability claims and for the administration of other self-insurance programs set forth in the Bylaws as amended from time to time;

4. Elect, at its first regular meeting of the fiscal year, a president, vice-president, and secretary to serve as officers of both the Board and the Executive Committee. Only directors from member public education entities located in Contra Costa County are eligible to be officers of the Board and of the Executive Committee.

5. Elect an Executive Committee. Two-thirds of the members of the Executive Committee must be directors from member public education entities located in Contra Costa County. The total number of Executive Committee members and their terms shall be specified in the bylaws.

6. Insure that a complete and accurate system of accounting of the Agency's funds is maintained at all times consistent with established accounting practices.

7. Provide, or cause to be provided, each member with an annual report of the financial condition of the Agency and of each program; provide, or cause to be provided at least annually, a loss report for each member for each program in which the member participates.

8. For each program, cause to be maintained accurate case records for all risks insured against, and accurate records of all claims paid and other expenditures.

9. Delegate its powers and duties, in whole or in part, to the Executive Committee and/or Executive Director.

9. **Executive Committee.** The officers of the Board shall also be the officers of the Executive Committee. The Executive Committee shall oversee govern the ongoing operations of the Agency and is authorized to:

- a. exercise the powers of the Agency as provided in section 7, above;
- b. approve the annual budget for the Agency and for each program;
- c. determine the annual premium rate for each program and the method by which such premiums will be paid;
- d. perform any and all functions delegated to it by the Board;
- e. appoint, discharge, oversee, evaluate and direct the performance of the Executive Director; designate staff positions; establish job descriptions and recruitment procedures;
- f. study and determine the methods of processing claims and whether claim administration should be contracted for or provided by staff;
- g. require and authorize protective bonds (such as performance and fidelity bonds.)
- h. establish criteria for membership in the Agency and for membership in each program offered by the Agency.
- i. make all decisions on membership in and involuntary termination from the Agency and each program offered by the Agency.
- j. provide for program specific subcommittees, establish their composition, and the duties and terms of their members, and dissolve such subcommittees.
- k. delegate its powers and duties, not specifically reserved, to program subcommittees and/or the Executive Director.

10. **Executive Director.** The Board may employ an Executive Director who will administer the programs and operations of the Agency subject to the oversight of the Executive Committee. The Executive Director shall serve at the discretion of the Executive Committee.

11. **Employees.** Employees are employed by the Agency pursuant to its independent status as a joint powers agency. Any persons employed by the Agency are employees of the Agency, not of its members. Employees of the Agency shall not have the status of employees of any member.

12. **Treasurer.** The Treasurer of Contra Costa County shall be the Treasurer of the Agency and the designated depository of the Agency. The Treasurer shall perform those functions prescribed by law including:

a. receive and receipt for all money of the Agency and place it in the Treasury so designated to the credit of the Agency;

b. be responsible upon his official bond for the safekeeping and disbursement of all Agency money held by him;

c. pay, when due, out of money of the agency or entity so held by him, all sums payable on outstanding bonds and coupons of the Agency;

d. pay any other sums due from the Agency from Agency money, or any portion thereof, only upon warrants or checks drawn by the Auditor of Contra Costa County;

e. verify and report in writing on the first day of July, October, January, and April of each year to the Agency and to the members the amount of money the Treasurer holds for the Agency, the amount of receipts since his last report, and the amount paid out since his last report.

13. **Auditor.** The Auditor-Controller of Contra Costa County shall perform for the Agency the auditor-controller functions described in Government Code sections 6505 and 6505.5:

a. the Auditor shall draw warrants to pay the demands against the Agency when the demands have been approved by the Executive Director or by an officer of the Agency, and by the County Superintendent of Schools.

b. the Auditor shall contract with a certified public accountant to make an annual audit of the accounts and records of the Agency. The minimum requirements of the audit shall be those prescribed by law and shall conform to generally accepted auditing standards. A report of the audit shall be filed as a public record with the Agency, with each of the members, and with the Contra Costa County Auditor. Such report shall be filed within twelve months of the end of the fiscal year under examination. Any costs of the audit, including contracts with, or employment of Certified Public Accountants or Public Accountants, shall be a charge against any unencumbered funds of the Agency available for that purpose.

14. **Accounts and Records.**

a. The Agency is strictly accountable for all funds received and dispersed by it. The Agency shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of law or any resolution of the Governing Board.

b. For each self-insurance program, the following funds shall be established:

1. Operating Fund

A. This fund shall be established and maintained out of member premiums and shall be for the purpose of paying for the following: insurance premiums; claims management; salaries of employees and/or administrators, if any; safety engineering and risk management; data processing costs; investigative costs; legal costs; replenishing the Reserve Fund; financial and performance audits or studies; miscellaneous operating expenses including costs of administration; such other payments as may lawfully be directed by the Governing Board.

2. Reserve Fund

A. This fund shall be the repository of the “reserves” to be used for future claims payments for the program.

B. Monies from any of the following sources will be deposited in this fund: interest and other investment income; refund of excess insurance program premiums; subrogation recoveries; grants from any agency or private company; excess insurance claims.

C. This fund be used for the purpose of paying claims and expenses relating thereto.

D. This fund will be replenished as necessary from the operating fund.

E. The amount in this fund shall not exceed a sum that is sufficient, as determined by the Board, to provide for the settlement of claims for a thirty-day period.

c. For each other program, a separate operating fund and a separate reserve fund shall be established.

d. Books and records of the Agency held by the Treasurer shall be open to inspection during business hours upon reasonable request of the members, or their representatives.

e. A separate system of records shall be maintained for each program administered by the Agency.

15. **Finance.**

a. The Agency shall operate on a fiscal year from July 1 of each year through June 30 of the following year.

b. Annually, the Executive Committee shall determine the formula and method for calculating the member premium for each program for the following fiscal year.

c. The Executive Committee shall set the estimated annual premium for each program for the following fiscal year. Thereafter, the Executive Committee shall inform members of the premiums as soon as possible.

d. For each program the Executive Committee shall determine the penalty and rate of interest to be charged for late payment of premiums for each program.

e. Members of the Workers Compensation/ Related Employers Liability Program shall pay premiums on the payment schedule established in the Bylaws for that program. Members of other programs shall pay premiums on the payment schedule established in the Bylaws for that program.

f. Each member hereby authorizes the Contra Costa County Superintendent of Schools to transfer from the member's general fund any required premium payment. Members that are fiscally independent, or are not public education entities in Contra Costa County agree to be invoiced for premiums and pay any such invoices when due. Members that do not timely pay premiums shall pay penalties and interest on late premiums at the rates determined under subsection (d) above.

g. As soon as practicable after the close of each fiscal year, the Executive Committee shall make a complete written report of all financial activities for the Agency and for each program for the prior fiscal year and provide a copy to each member.

16. **Separate Financing For Each Program.**

a. Each program shall be fiscally independent from other programs. No program shall be liable or responsible for the obligations, costs, expenses, or liabilities for any other program. The members of each program shall be responsible for payment of all obligations, costs, expenses and liabilities of that program. No member shall be liable for the obligations, costs, expenses or liabilities for any program to which the member does not belong. To achieve this purpose, each member of a program hereby agrees to indemnify and hold harmless those members of the Agency that are not members of that program for any obligation, cost, expense or liability of that program that may be imposed on the non-members.

b. Should the claims for a program exceed the total annual premiums paid by the members of that program, the Board shall levy an additional assessment on the members of that program. Each member of the program shall be assessed an additional amount based upon the percentage of annual premiums paid by each member of the program relative to the total annual premiums paid by all members of the program. Each member hereby authorizes the Contra Costa County Superintendent of Schools to transfer from the member's general fund any additional assessment. Members that are fiscally independent or are not public education entities in Contra Costa County agree to be invoiced for additional assessments and pay any such invoices when due.

c. By a four-fifths vote of the entire number of directors on the Executive Committee, whether a member's seat is filled or unfilled, the Executive Committee may authorize a loan with interest from one program's funds then available for long-term investment to another program. In authorizing any such loan, the Executive Committee shall require that the entire principal amount of the loan be repaid and shall set the rate of interest to be charged to the Program receiving the loan proceeds. The Executive Committee shall also determine the repayment schedule and the legal instrument by which the loan will be made. Interest on a loan shall accrue to the benefit of, and shall be paid to, the program making the loan.

17. **Investment of Surplus Funds.**

a. The Agency shall have the power to cause the Treasurer to invest such reserves as are not necessary for the immediate operation of the Agency in such investments as are allowed by law.

b. The level of cash to be retained in the Operating Fund for each program shall be determined by the Executive Committee.

18 . **Disposition of Property and Funds.**

a. In the event of the dissolution of the Agency, the complete recision, or other final termination of this Agreement by all public education entities then parties hereto, no assets may be divided or returned to members until all outstanding obligations of each program and of the Agency are discharged. Any property interest or monies remaining in a program or the Agency following the discharge of all obligations shall be returned to the members . Such property interest or monies shall be referred to as “the remainder.”

b. A member shall receive a pro rata share of the remainder attributable to any program assets only if such assets were purchased or otherwise acquired for the program during the member’s term of membership in the program. The member’s pro rata share shall be determined by dividing the total premiums paid by the member for the program by the total premiums paid by all program members during the member’s term of membership in the program.

c. A member shall receive a pro rata share of the remainder attributable to any Agency assets only if such assets were purchased or otherwise acquired for the Agency during the member’s term of membership in the Agency. The member’s pro rata share shall be determined by dividing the total premiums paid by the member during its term of membership in the Agency by the total premiums paid by all members of the Agency during the member’s term of membership in the Agency.

19 . **Liability.**

a. The legal liabilities of the Agency, the members of the Board, the Executive Committee, and all officers and employees of the Agency are controlled by the provisions of Division 3.6 of Title I of the California Government Code.

b. Pursuant to Government Code section 895 et. seq., each member shall be liable only for its pro rata share of all debts and liabilities of the Agency which arise during the

respective member's membership in the Agency. To achieve this purpose, each member hereby agrees to indemnify and hold harmless the other members for any loss, cost, or expense that may be imposed upon the other members in excess of their pro rata share of liability. The rules for interpreting indemnity agreements provided in California Civil Code section 2778 are hereby incorporated in this Agreement.

c. The debts, liabilities and obligations of the Agency are not the debts, liabilities, and obligations of any party to the Agreement.

d. The Agency shall insure itself and the members against loss, liability and claims, other than workers' compensation and related employer's liability claims which are otherwise covered by this agreement, arising out of or in any way connected with this Agreement.

e. As used in this section "pro rata share" shall refer to the total premiums paid by the member divided by the total premiums paid by all existing members of the Agency from the inception of the Agency to the date of the Agency's dissolution.

20. **Arbitration.**

a. Whenever an award is made in a workers' compensation proceeding involving an employee of a member, and that member believes that one or more other members may be responsible, in whole or in part, for the industrial accident or illness, those parties potentially responsible agree to engage in good faith negotiations to resolve the liability of each member for such industrial accident or illness. In the event the involved members are unable to resolve any such dispute by negotiation, then such dispute shall be submitted to arbitration before a single arbitrator selected in accordance with the rules of the American Arbitration Association or of the State Conciliation Service and the award rendered by the arbitrator shall be final and binding on the parties to the arbitration.

b. The arbitration shall be held within the State of California in accordance with California Code of Civil Procedure sections 1280 et. seq., and the rules of the American Arbitration Association or the State Conciliation Service.

c. The parties to the arbitration shall share equally the costs of the arbitration, and each party shall be responsible for its own costs and attorneys fees.

21 . **Membership.**

a. The members are those public education entities which have the common powers described in section 7, above and which are signatories to this Agreement.

b. Each member is entitled to all rights and privileges and is subject to all obligations of membership as provided in this Agreement.

c. Any school district, county office of education, and any community college district or joint powers agency composed of such public education entities, located in the State of California, having the common power described in section 7, above, may apply to join the Agency and to participate in one or more programs upon request of its governing board, or in the case of county offices of education, upon request of the county superintendent of schools. The Executive Committee, and any subcommittees for programs into which the applicant seeks entry, shall review and consider the application of each prospective new member of the Agency and the application of each existing member for entry into a new program. The review shall consider the applicant's past appropriate experience for the programs the applicant desires to join and applicant's current financial standing, and other criteria established in the Executive Committee's guidelines for membership. Each involved program subcommittee shall recommend approval or denial of each application to the Executive Committee.

d. An applicant shall become a member if 1) such membership is approved by a 4/5 vote of the Executive Committee; 2) the applicant executes this Agreement; and 3) the applicant pays the premium determined by the Executive Committee for each program in which it will participate. Upon satisfaction of each condition, participation by new members shall begin the July 1 following approval of the application, unless the Executive Committee shall set another date.

e. Once admitted to a program, a member must remain in the program for three (3) consecutive fiscal years.

22. **Withdrawal From A Program.**

a. No member may withdraw from any program for three (3) consecutive fiscal years after the effective date of this First Amended Joint Exercise of Powers Agreement.

b. Thereafter, any member that has completed three (3) consecutive fiscal years in a program may terminate its participation in the program at the end of any fiscal year, by providing written notice of withdrawal to the Board by December 31 of the fiscal year. Withdrawal shall be effective the following June 30.

c. Any member that terminates its participation in a program shall not be considered for readmission to the program for a period of one (1) year from the effective date of withdrawal from the program. An application to rejoin the program will be considered in the same manner as any new application to join the program.

d. A member terminating its participation in a program shall continue to be responsible for its pro rata share of any assessments or deficits for the program for the period during which the member participated in the program.

e. Any member which terminates its participation in a program shall continue to be eligible for program dividends (if any) given to program members for the years when the member participated in the program.

23 . **Withdrawal From The Agency.**

a. Any member having completed three consecutive years as a party to this agreement after June 30, 2003, and having withdrawn from all programs in which the member participated, may withdraw from its status as a member of the Agency at the end of any fiscal year under the terms and conditions set forth in this section.

b. Any member desiring to withdraw shall, by action of its governing board or County Superintendent of Schools, provide written notice of withdrawal to the Executive Committee by December 31. Withdrawal is effective the following June 30, provided that the withdrawing party has, prior to June 30, either discharged, or has entered an agreement with the remaining members for the discharge of any pending obligations the withdrawing party has assumed hereunder.

c. If the Agency declares a dividend for a program for any fiscal year in which the withdrawn party was a member, the withdrawn party shall receive a pro rata share of the dividend. The pro rata share shall be determined by dividing the total program premium paid by the withdrawn party by the total premiums paid by all members of the program for the fiscal year for which the dividend was declared.

d. If the Agency levies an additional assessment for a program for any fiscal year in which the withdrawn party was a member, the withdrawn party shall pay a pro rata share of the additional assessment. The pro rata share shall be determined by dividing the total program premium paid by the withdrawn party by the total premiums paid by all members of the program for the fiscal year for which the additional assessment was levied.

e. A party's withdrawal shall not be construed as a completion of the purpose of this Agreement and shall not require the repayment or return to the parties of all or any part of any contributions, payments or advances made by the parties until the agreement is rescinded or terminated as to all parties.

f. Aside from a pro rata share of a dividend, a withdrawn party shall not receive any refund or repayment of contributions, or any other payment, including payment of a pro rata share of a remainder except as provided in section 18 above.

g. Upon the effective date of withdrawal, the withdrawn party shall no longer be a signatory to this agreement and shall no longer be a member of the Agency.

24 . **Involuntary Termination.**

a. Upon a four-fifths vote, the Executive Committee may involuntarily terminate a member from the Agency or from a program to which the member belongs. Such termination shall be effective on June 30 of the fiscal year in which the Executive Committee acts to terminate the member, or on such other date determined by the Executive Committee. The Executive Committee shall give at least 120 days prior written notice of involuntary termination.

b. Grounds for involuntary termination include, but are not limited to any of the following:

1. Failure or refusal to pay premiums to the Agency as provided in sections 14 and/or 15 above;
2. Consistently jeopardizing the Agency by failing or refusing to correct the member's accident rate.
3. Failure or refusal of a member to abide by the this Agreement, the Bylaws, or the Agency's policies and regulations.
4. Failure to comply with safety programs adopted by the Agency.
5. Persistent failure to follow positive risk management practices.
6. Making a misrepresentation to the Agency of a material fact, or omitting a material fact in representations to the Agency for the purposes of obtaining or continuing membership in the Agency.

c. If the Agency declares a dividend for a program for any fiscal year in which the terminated party was a member, the terminated party shall receive a pro rata share of the dividend. The pro rata share shall be determined by dividing the total program premiums paid by the terminated party by the total premiums paid by all members of the program for the fiscal year for which the dividend was declared.

d. If the Agency levies an additional assessment for a program for any fiscal year in which the terminated party was a member of that program, the terminated party shall pay a pro rata share of the additional assessment. The pro rata share shall be determined by dividing the total program premium paid by the terminated party by the total premiums paid by all members of the program for the fiscal year for which the additional assessment was levied.

e. Aside from a pro rata share of a dividend, a terminated party shall not receive any refund or repayment of contributions, or any other payment, including payment of a pro rata share of a remainder except as provided in section 18 above.

f. Upon the effective date of involuntary termination from the Agency, the terminated party shall no longer be a signatory to this agreement and shall no longer be a member of the Agency.

25. **Termination.** This Agreement may be terminated at the end of any fiscal year by the affirmative action of the majority of the then participating parties, provided that: 1) such affirmative action is taken on or before January 1, of that fiscal year; and 2) all outstanding obligations of the Agency have been discharged or the then participating parties have entered into an agreement for the discharge of all outstanding obligations. Such agreement may provide that members will accept responsibility for outstanding claims.

26. **Amendment.** This Agreement may be amended at any time by a subsequent written agreement signed by two-thirds of the parties hereto. Any such amendment shall be effective on the date of execution thereof by the last party necessary to effect an amendment.

27. **Severability.** Should any portion, term, provision, or condition of this agreement be determined by a court to be illegal or in conflict with any law of the State of California, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, provisions, and conditions shall not be effected thereby.

28. **Choice of Law.** This agreement is made in Contra Costa County and shall be governed and construed in accordance with the laws of the State of California. Any action relating to this agreement shall be instituted and prosecuted in the courts of Contra Costa County.

29. **Bylaws.** The Executive Committee may establish such bylaws, rules and regulations, not inconsistent with applicable law or with this agreement, as may be necessary for its operation and for the conduct of its business, including bylaws, rules and regulations for the creation of, membership in, exclusions from, and operation of new self-insurance, pooling, and joint purchase of insurance programs. The Workers Compensation/Employers' Liability Program may be modified by amendments to the Bylaws.

30. **Definitions.** Unless the context requires otherwise, the terms used herein shall have the following meanings:

- A. AGENCY shall mean the Contra Costa County Schools Insurance Group created by this agreement.
- B. BOARD shall mean the board of directors of the Agency.
- C. BROKER shall mean any broker engaged by the Board for the purpose of acquiring an insurance policy.
- D. CLAIMS ADJUSTER shall mean any claims adjuster engaged or employed by the Board for the purpose of determining losses and payments.
- E. EMPLOYERS' LIABILITY COVERAGE means coverage for any liability of member districts for injuries to, or death of, employees arising out of, and in the course of, employment when this coverage is incidental to the workers' compensation provided for herein.
- F. EXECUTIVE COMMITTEE shall mean the committee described in Section 9, which governs the Agency.
- G. FISCAL YEAR SHALL MEAN July 1st to June 30th.
- H. LOSS REPORTS shall mean reports for a program showing a member's claims history and current status.

- I. MEMBER shall mean an individual school district, community college district, or County Board of Education/Superintendent of Schools or joint powers agency which is a party to this agreement and belongs to the Contra Costa County Schools Insurance Group.
- J. OPERATING FUND shall mean the fund established by the Agency for each program for the purpose of paying insurance premiums, salaries and benefits of employees, and administrative and other costs.
- K. PROGRAM shall mean insurance coverage and services provided through the Agency for a particular risk, or for provision of a particular benefit.
- L. PREMIUM shall mean money paid by a member to the Agency in return for the benefits and privileges of membership in a program. "Premium" shall include additional assessments imposed pursuant to section 16 above.
- M. PUBLIC EDUCATION ENTITY shall mean a school district, a county office of education, a community college district, or a joint powers authority composed of school districts, county offices of education and/or community college districts.
- N. RESERVES shall mean that part of the member's premium for a program held by the Agency to make future payments for that program.
- O. SELF-INSURANCE (permissively uninsured) shall mean setting aside funds to pay for losses not covered by insurance.
- P. TRUST FUND shall mean the fund established for a program for the purpose of paying the cost of workers' compensation or other types of claims and expenses related thereto.
- Q. WORKERS' COMPENSATION includes employers' liability claims related to workers' compensation.

31 . **Filing with the Secretary of State.** A notice satisfying the requirements of California Government Code section 6503.5 shall be filed with the Secretary of State no later than thirty (30) days following the date the amendments to this Agreement become effective.

32. **Entire Agreement.** This Agreement contains all the terms and conditions agreed upon by the parties. Except as expressly provided herein, no other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto.

(This First Amended Joint Exercise of Powers Agreement may be executed in counterparts.)

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS FIRST AMENDED JOINT EXERCISE OF POWERS AGREEMENT BY THEIR AUTHORIZED OFFICERS AS SET FORTH HEREIN BELOW:

District

Date: _____

By: _____
(Authorized representative)