

JOINT POWERS AGREEMENT

Amended December 13, 2022

*Joint Powers Agreement
For The Operation of a Common Risk Management
and Liability Prevention Program*

BUTTE SCHOOLS SELF-FUNDED PROGRAMS

BUTTE SCHOOLS SELF-FUNDED PROGRAMS

Amended Joint Powers Agreement For The Operation of a Common Risk Management and Liability Prevention Program

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1	CREATION OF THE JOINT POWERS ENTITY..... 3
ARTICLE 2	PURPOSE OF THE AUTHORITY 3
ARTICLE 3	POWERS OF THE AUTHORITY 4
ARTICLE 4	FUNCTIONS OF THE AUTHORITY 4
ARTICLE 5	TERM OF THE AGREEMENT 5
ARTICLE 6	BYLAWS..... 5
ARTICLE 7	MEMBERSHIP..... 5
ARTICLE 8	TERMINATION OF AGREEMENT 6
ARTICLE 9	DISPOSITION OF PROPERTY AND FUNDS..... 6
ARTICLE 10	SURPLUS FUNDS..... 6
ARTICLE 11	AMENDMENT..... 7
ARTICLE 12	SEVERABILITY 7
ARTICLE 13	LIABILITY AND INDEMNIFICATION 7
ARTICLE 14	ENFORCEMENT 8
ARTICLE 15	FILING WITH THE SECRETARY OF STATE 8
ARTICLE 16	AFFIRMATIVE ACTION POLICY STATEMENT 8
ARTICLE 17	EXECUTION OF COUNTERPARTS. 8

BUTTE SCHOOLS SELF-FUNDED PROGRAMS

Amended
Joint Powers Agreement
For The Operation of a Common
Risk Management and Liability Prevention Program

This Joint Powers Agreement ("Agreement") amends the Butte Schools Self-Funded Programs Joint Powers Agreement dated October 24, 1991, and subsequently amended. This Amendment will supersede any prior Agreement between the parties upon its approval by a weighted two thirds (2/3) vote of the Board of Directors of Butte Schools Self-Funded Programs. The manner of determining the relative weights of Members' votes shall be set forth in duly enacted policies and procedures of the joint powers authority formed by this Agreement.

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 Exercise of Powers Act"), relating to the joint exercise of powers between the public educational agencies signatory hereto and those which may hereafter become signatory hereto, for the purpose of operating an agency known as Butte Schools Self-Funded Programs ("BSSP").

This Agreement, and all other BSSP governing documents, memoranda of coverage, or other Program documents (other than insurance policies written by insurance carriers and purchased by or through BSSP in the insurance marketplace) shall be interpreted according to principles of ordinary contract law of the State of California, and not according to principles of California insurance common law or statutory law. In addition, since this Agreement and the other BSSP documents referenced above are the product of mutual drafting by all of BSSP's Members, no party shall be entitled to rely on any principle of law that would require any ambiguity in a contract to be construed against the party that created it.

WITNESSETH:

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

WHEREAS, Sections 35214 and 72506 of the California Education Code permit school and community college districts to purchase insurance or to self-insure, *i.e.*, self-fund, against the risks set forth in California Education Code sections 35208 and 72506; and

WHEREAS, Sections 17566 and 81601 of the California Education Code permit school and community college districts, to insure property against other perils; and

WHEREAS, Sections 17566 and 81602 of the California Education Code 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-funded programs, losses or payments due to non-covered perils, and the payment of claims, administrative costs, and related services; and

WHEREAS, Sections 17567 and 81603 of the California Education Code permit any two or more school or community college districts to enter into a Joint Powers Agreement pursuant to the Joint Exercise of Powers Act, to perform the functions set out in California Education Code sections 17566, 39602, 81601 and 81602; and

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

WHEREAS, Section 990.8 of the California Government Code 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 forth in Government Code section 990, *et seq.*; 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 educational agencies to jointly exercise any power common to them; and

WHEREAS, the signatories hereto have determined that there is a need by public educational agencies to develop (i) effective risk management programs to reduce the amount and frequency of their losses and (ii) self-funded 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 educational 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 of 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 educational agencies Signatory hereto, will be and is hereby created and is designated as the Butte Schools Self-Funded Programs ("Authority") or BSSP.

1.2 The governing bodies of the Authority will be its Board of Directors and its Executive Committee. The Board of Directors and the Executive Committee will 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-funded basis various risks in excess of individually selected deductible amounts and up to a jointly selected maximum;
- 2.1.2 Jointly purchasing insurance coverage or participating in risk pools and/or programs to provide coverage over the self-funded maximum;
- 2.1.3 Creating and maintaining loss funds to pay the costs of self-funded portions of covered losses;
- 2.1.4 Jointly purchasing insurance, other products and services for the mutual benefit of the Members;
- 2.1.5 Implementing a risk management program;
- 2.1.6 Providing a forum for discussion, study, development and implementation of recommendations of mutual interest regarding self-funded protection, risk management and other programs, as more specifically provided for in the Bylaws; and
- 2.1.7 Providing for the future inclusion of additional public educational agencies which desire to become parties to this Agreement.

ARTICLE 3 POWERS OF THE AUTHORITY

3.1 The Authority will have the power and authority to exercise (i) any power common to the public educational agencies which are parties to this Agreement, (ii) any powers contained in the Joint Exercise of 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 will be subject to the same restrictions as are imposed upon public educational 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 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, claims servicing, legal representation, safety engineering, health education, and other services as necessary or appropriate for the 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 after "stop-losses" are repaid will be divided between the Authority and the Member against which the underlying claim was charged, in proportion to each authorized payment made toward resolution of the underlying claim.
 - 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 claims 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 will become effective at 12:01 a.m. on the day following the date as of which a weighted two-thirds (2/3) vote of the members of the Board of Directors adopt a resolution approving this Agreement.

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

ARTICLE 6 BYLAWS

6.1 The Authority will be governed pursuant to the 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 the Bylaws and further agrees that the Authority will be operated pursuant to this Agreement and the Bylaws.

6.2 The Bylaws may be amended by a weighted two-thirds (2/3) vote of the authorized number of Directors of the Board of Directors. Such amendments will bind all members of the Authority. The effective date of any amendment will be immediately upon its enactment, unless otherwise stated in the measure enacting it.

ARTICLE 7 MEMBERSHIP

7.1 Any public educational 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 will 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 will be referred to as a "Member" of the Authority.

7.4 A Member may terminate its membership or be involuntarily terminated from membership as set forth in the Bylaws and /or in any other of BSSP's governing documents in effect at the time of such withdrawal or involuntary termination. A Member's voluntary withdrawal or involuntary termination shall not be construed as a completion of the purpose of this Agreement, and shall not require the return, to any party, of any part of any contribution(s), payment(s), or advance(s) made by any party.

7.5 A Member's voluntary withdrawal or involuntary termination shall not affect the Member's obligations to pay its appropriate share of any assessment for additional contributions of funds to BSSP or to any BSSP Program.

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, or should the Board of Directors by a weighted seventy-five percent (75%) vote determine that the purpose of this Agreement has been completed and/or that it is economically not feasible for the Authority to continue, this Agreement will terminate and the Authority will dissolve; except that the Authority will continue to exist for the purpose of disposing of all claims, distributing its assets, and performing all other functions necessary to windup its affairs, all as more particularly set forth in the Bylaws.

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 will be disposed of as provided in the Bylaws.

9.2 "Obligations", as referred to herein, will include, but not be limited to, all payments required by law, together with all reserves established for the purpose of paying liability claims and related claim 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 will be determined as set forth in the Bylaws.

ARTICLE 10 SURPLUS FUNDS

10.1 The Authority will 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, as hereinafter amended, and Sections 17566 and 81602 of the California Education Code, as hereinafter amended, in such investments as are permitted by law.

10.2 The level of cash to be retained for the actual operation of the Authority will be determined by the Board of Directors.

10.3 Should the Authority complete its purposes as set forth herein, any available surplus funds will 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 amended versions of this Agreement may be amended by written agreement signed by a weighted two-thirds (2/3) vote of the authorized number of Directors of the Board of Directors. Such amendments will be binding upon all Members of the Authority on the date set forth therein, and failure of a Member to abide by any amendment may result in involuntary termination as provided in the Bylaws.

ARTICLE 12 SEVERABILITY

12.1 If any portion, term, condition or provision of this Agreement is 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 will 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 will be based on that Member's premium contributions paid for the fiscal year in which the liability arose compared with the total premium contributions paid by 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, will be controlled by the provisions of Division 3.6 of Title I of the California Government Code (Government Code section 810, *et seq.*), as amended from time to time.

13.4 This Agreement creates a risk pooling arrangement for each Program of coverage 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 claims, 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 claim, 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 will be based on that Member's premium contributions paid for the fiscal year in which the liability arose or was incurred, compared with the total premium contributions paid by all the Members participating in the Program in the relevant fiscal year.

13.5 The Authority may insure itself against loss, liability and claims 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, the Bylaws, and any policies, procedures, or other measures duly adopted by the Authority.

ARTICLE 15 FILING WITH THE SECRETARY OF STATE

15.1 A Notice satisfying the requirements of Section 6503.5 of the California Government Code will be filed with the office of the Secretary of State no later than thirty (30) days following the date this Amendment becomes effective.

ARTICLE 16 EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

16.1 It shall be BSSP's policy to provide equal employment opportunities without regard to race, color, religion, sex (including pregnancy and gender identity), national origin, age, disability, marital status, veteran status, sexual orientation, genetic information or any other protected characteristic under applicable law. This policy relates to all phases of employment, including, but not limited to, recruiting, employment, placement, promotion, transfer, demotion, reduction of workforce and termination, rates of pay or other forms of compensation, selection for training and professional development, the use of all facilities, and participation in all company-sponsored employee activities. Provisions in applicable laws providing for bona fide occupational qualifications, business necessity or age limitations will be adhered to by BSSP where appropriate.

See next page for Article 17.

ARTICLE 17 EXECUTION OF COUNTERPARTS.

17.1 This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS JOINT POWERS AGREEMENT FOR THE OPERATION OF A COMMON RISK MANAGEMENT AND LIABILITY PROTECTION PROGRAM BY THEIR AUTHORIZED DELEGATES.

Dated:

Public Educational Agency (District)

President of its Governing Board