

RESOLUTION #2020-24

SIXTH AMENDMENT AND RESTATEMENT OF THE SCHOOLS EXCESS LIABILITY FUND A JOINT EXERCISE OF POWERS AGREEMENT Among Specified Public Educational Agencies for the Management, Operation and Maintenance of Risk Pooling and Insurance Programs for Excess Liability, Property, Workers' Compensation and other Programs

THIS DOCUMENT constitutes the Sixth Amendment and Restatement of the Schools Excess Liability Fund Joint Powers Agreement (hereinafter "Agreement") effective December 7, 2018. This Agreement supersedes that original Agreement dated March 1, 1986 as well as all prior amendments thereto. Pursuant to the provisions of Title I, Division 7, Chapter 5, Article 1 of the Government Code of the State of California (commencing with Section 6500 thereof) relating to the joint exercise of common powers, this Agreement is entered into among those **public educational agencies** as defined in this Agreement, which are or may hereafter become **parties** to this Agreement, for the purpose of operating an **Authority** to be known and designated as "Schools Excess Liability Fund," hereinafter referred to as SELF.

W I T N E S S E T H

WHEREAS, the public interest requires and it is to the mutual benefit of the **parties** hereto to join together to establish and operate cooperative **programs** of risk pooling, insurance and risk management for excess liability, property, workers' compensation and other **programs**, and

WHEREAS, the operating of such cooperative **programs** is of such magnitude that it is necessary for the **parties** to this Agreement to join together to accomplish the purposes hereinafter set forth, and

WHEREAS, each of the **public educational agencies** which is a **party** to this Agreement has the power to establish, manage, operate and maintain **programs** of excess risk pooling and insurance for liability, property, workers' compensation and other **programs**, and

WHEREAS, Title I, Division 7, Chapter 5, of the California Government Code authorizes the joint exercise by two or more public agencies of any power which is common to each of them;

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 educational agencies**, each of the **parties** hereto does agree as follows:

(Throughout this Agreement, words and phrases that appear in bold type have special meanings. They are defined in Section I, below.)

I. DEFINITIONS

Unless otherwise stated herein, for purposes of this Agreement the following words shall have the meanings stated:

- A. **Agreement** means this Joint Powers Agreement executed by parties to **SELF**.
- B. **Authority** means **SELF**.
- C. **Board** means the **Board** of Directors of SELF as established by this Agreement and the Bylaws.
- D. **Bylaws** means the **Bylaws** by which SELF is to be governed.
- E. **Claim** means that portion of a settlement, judgment, compromise and release, award, **claim** or other covered loss, which exceeds or is likely to exceed a **party's retained limit** as specified in the appropriate **Memorandum of Coverage**. **Claim** costs shall include expenses as defined in such **Memorandum of Coverage**.
- F. **Contracting party** means that Party designated by the Board pursuant to Government Code section 6509.
- G. **Contribution** shall mean money, including, but not limited to, special assessments, paid by a **party** to SELF in return for the services and coverage outlined in the appropriate **Memorandum of Coverage**.
- H. **Fiscal year** means the period of time commencing on July 1 and ending the following June 30.
- I. **Fund** means a sum of money established for the purpose of carrying out this Agreement. A separate **fund** shall be established for each **program**.
- J. **Member** means a person duly elected or appointed to the **Board** of Directors as provided for in this Agreement.
- K. **Memorandum of Coverage** means a document specifying terms, conditions, coverages, and limits of liability for a **program** operated by SELF.
- L. **Party** means a **public educational agency** which is a **party** to this Agreement.
- M. **Program** means liability, property, workers' compensation, or other coverage programs authorized by the **Board**.

- N. **Public educational agency/agencies** means any public school district, community college district, county board of education/county superintendent of schools, regional occupational programs/centers, The California State University or other public entity providing educational programs or services to the community, or such joint powers agencies/authorities consisting of one or more of the foregoing and serving the interests of the public entities detailed in this Agreement.

II. PURPOSE

The purpose of this Agreement is to establish, operate, and maintain and/or fund pooling and insured **programs** for excess liability, property, workers' compensation and other **programs** approved by the **Board**, the function of said **programs** being within the power common to each of the **parties** to this Agreement.

III. ADMINISTRATION

SELF shall be governed by a **Board** of Directors, which shall be established and shall operate as follows:

- A. With the exception of the two *ex-officio* positions, eligibility for membership on the **Board** shall be limited to employees of **public educational agencies** that are **parties** to the SELF **Agreement** as defined. Only the designated primary **Board member** or alternate **Board member** may represent that **member's** constituency.
- B. Membership: The **Board** of Directors shall consist of sixteen elected and one appointed voting **members** and two *ex-officio* **members**, as follows:
1. There shall be four elected **members** from community colleges, two representing the South and two representing the North (See Appendix I);
 2. There shall be one elected **member** from each of the **SELF Areas** one, two, three and four (See Appendix I);
 3. There shall be two elected **members** from **SELF Area** five (See Appendix I);
 4. There shall be six elected **members** from **SELF Area** six (See Appendix I);
 5. There shall be one *ex-officio* **member** from the State Community College Chancellor's Office;
 6. There shall be one *ex-officio* **member** from the Office of the State Superintendent of Public Instruction; and

7. There shall be one **member** appointed by the Chancellor of The California State University for so long as The California State University is a **party** to the **SELF Agreement**.
- C. Election: Each **party** to the **Agreement**, with the exception of The California State University, shall be entitled to submit one ballot for the election of **members** within its **SELF Area**. Elected **Board members** shall begin their term of office July 1, following the election.
- D. Alternates: The **Board** shall appoint alternates for each **member**. The **Board** may consider recommendations from **members** when making such appointments. Alternates shall serve at the pleasure of the **Board**.
- E. Term of Office: Elections shall be held every two years. Each **member** shall serve for a period of four (4) years. The terms of office for the **members** from the State Community College Chancellor's Office, the Office of the State Superintendent of Public Instruction, and The California State University shall be determined by the appointing authority.
- F. Vacancies of the **Board**: In the event that a **member** is unable to fulfill his/her term of office, the **Board** shall, at its discretion, appoint a replacement to serve the remainder of the **member's** term. In the event that a **member** is an employee or agent of a **party** giving notice of withdrawal, pursuant to Article XV of these Bylaws, such **member** shall be deemed to have resigned from the **Board** as of the date of the notice, even though the effective date of the resignation occurs at the end of the fiscal year.
- G. SELF shall comply with the Ralph M. Brown Act (Government Code § 54950 *et seq.*) to the extent required by law.
- H. Quorum: Except as otherwise required by the **Agreement** and these **Bylaws**, a quorum of the **Board** shall consist of a majority of the voting **members** of the **Board** or when applicable (*e.g.*, due to **Board member(s)** absence from a meeting), **Board** alternates.
- I. Attendance at Meetings: All **members** or their alternates shall attend all meetings of the **Board**. If a **member** or alternate fails to attend two consecutive meetings, the **Board** may declare a vacancy in that office.
- J. Voting: With the exception of *ex-officio* positions, each **member** or, when applicable, alternate, shall have one vote, which may be cast on any issue before the **Board**. Except as otherwise permitted by Sections 54950, *et seq.* of the California Government Code, no proxy or absentee votes shall be permitted. Except as otherwise provided in these **Bylaws**, a vote of a majority of the primary or alternate **Board members** in attendance shall be sufficient to constitute action, provided a quorum is established.
- K. **Board Officers**: The officers of the Board shall consist of a chairperson, vice chairperson, secretary and comptroller. The officers shall be elected by the **Board** from among

themselves on a single vote per **member** basis. The term of office for officers shall be two (2) years.

- L. Notice of Meetings: Except for special meetings, notices of meetings shall be sent by mail to each **member** and alternate no less than thirty (30) days before regularly scheduled meetings.
- M. Conduct of Meetings: Unless otherwise determined by the **Board**, meetings shall be conducted pursuant to the most current edition of “Robert’s Rules of Order.”
- N. Minutes: The secretary shall cause to be kept minutes of all open-session meetings of the **Board** and shall, as soon as possible after each meeting, cause a copy of the minutes to be provided to each **member** and alternate.
- O. Expense Reimbursement: Members or alternates shall receive reimbursement for travel and *per diem* expenses incurred in accordance with policy established by the Board. Members or alternates shall not receive any other form of reimbursement.
- P. Indemnification: **Board members** and their alternates are indemnified, by the **Agreement**, and SELF does hereby agree to indemnify and hold them, and each of them, severally and jointly, harmless against and free from all claims, expenses, demands, penalties, fines, forfeitures, judgments, settlements, attorney fees, and any other amount whatsoever actually and reasonably incurred or threatened by reason of, or as a result of, their official participation and actions in pursuance of the execution and administration of the **Agreement** and the operation of the **Authority** created thereunder, including but not limited to amounts arising out of or by any judicial or quasi-judicial action or proceeding, whether civil, criminal, administrative or investigative, on condition that it appear to the satisfaction of the **Board** that the indemnitee acted in good faith and in a manner reasonably believed by him or her to be in the best interest of SELF, or that such a person had no reasonable cause to believe that his or her conduct under the circumstances was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or plea of *nolo contendere* or its equivalent shall not for purposes of the Agreement and these **Bylaws** of itself create any presumption that the indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in the best interest of SELF, nor any presumption that such a person had reasonable cause to believe that his or her conduct under the circumstances was unlawful. This provision of indemnity shall not be construed to obligate SELF to pay any liability, including but not limited to, punitive damages, which by law would be contrary to public policy or itself unlawful. The **Board**, at its discretion, may self-fund or provide for errors and omissions insurance policy coverage for the directors and officers and employees of SELF, at the expense of SELF.
- Q. Meetings: The **Board** may conduct regular, adjourned regular, special, and adjourned special meetings, provided, however, that it will hold at least two regular meetings each year. The date, time and place for the regular meetings shall be fixed by the **Board**. Such meetings shall be publicly noticed prior to the meeting by the **Board**. All meetings of the **Board** shall be called, held, and conducted in accordance with the terms and provisions of the Ralph M. Brown Act (Sections 54950, *et seq.* of the California Government Code), and

as augmented by rules of the **Board** not inconsistent therewith. A calendar shall be distributed to all primary and alternate **Board members**, and to any person who has filed a written request seeking notice of **Board** meetings, and shall provide notice solely of regular (*i.e.* not special or adjourned regular or special) meetings. The **Board** may hold additional meetings as determined by the **Board** and consistent with the Brown Act. Except as otherwise provided or permitted by law, all meetings of the **Board** shall be open and public. The **Board** shall cause to be kept minutes of its meetings, and shall promptly transmit to the primary **members** of the **Board** and their alternates, true and correct copies of the minutes of such meetings.

- R. The **Board** shall designate its principal office as the location at which it will receive notices, correspondence, and other communications, and shall designate one of its primary **members** or employees as an officer for the purpose of receiving service on behalf of the **Board**. The **Board** shall comply with the provisions of Sections 6503.5 and 53051 of the Government Code requiring the filing of a statement with the Secretary of State and with the State Controller.
- S. The Board may establish rules governing its own conduct and procedure, and have such expressed or implied authority as is not inconsistent with or contrary to the laws of the State of California, this **Agreement** and the **Bylaws**.
- T. Consistent with Government Code section 6509, SELF hereby designates the Orange County Department of Education as the **contracting party** whose restrictions upon the manner of exercising powers described in Government Code section 6509 shall also apply to SELF. In the event that the **contracting party** ceases to be the **contracting party**, the Board may designate a new **contracting party** to take the place of the terminating **contracting party** by formal resolution of the Board with written consent of the new **contracting party**.
- U. Administration: The **Board** shall, either directly or by contract, perform the following services:
 - 1. Provide for payments of **claims** in accordance with this **Agreement** and the **Bylaws**.
 - 2. Establish yearly **contributions** and loss reserves for each **program** and return of **contributions**/rate credits, if appropriate. Pursuant to the payment of the required **contributions** by each **party** to SELF, SELF shall issue to each **party** a **Memorandum of Coverage** indicating the coverage provided to the **party** by SELF and the exchange of services, if any. The coverage provided by such **Memorandum of Coverage** will begin for each **party** on the date set forth in the declarations of the **Memorandum of Coverage** and will expire at the end of the **fiscal year**.
 - 3. Provide a strict accountability of all **funds** for each **program** and a report of all receipts and disbursements.

4. Provide for pooled or insured **excess coverage** above the **retained limit** as specified in the respective **program Memorandum of Coverage**.
5. Provide, when necessary, for legal representation in defense of **claims** expected to exceed the **retained limit**.
6. Provide for annual audit of the **funds** by an independent Certified Public Accountant.
7. Provide for management reports, including but not limited to, actuarial analyses, claims audits and special reports.
8. Prepare and maintain **claim** files and other records and cause same to be retained.
9. Provide for, when necessary, investigation of **claims**.
10. Provide information in defense of **claims**.
11. Authorize the allowance, compromise, settlement or rejection of **claims**.
12. Prepare all notices and reports and otherwise prepare all matters necessary to comply with the provisions of state law and other legal directives.
13. Prepare a Policy and Procedures Operating Manual to be followed by each of the **parties** hereto.
14. Except as otherwise provided in this **Agreement** and the **Bylaws**, the **Board** shall have the authority to make and enter into contracts, employ agents and employees, acquire, hold and dispose of real and personal property, incur all debts, liabilities or obligations as is necessary to administer and carry out the purposes of the Authority, file suit, and enter into such settlements as may be beneficial to SELF, as determined by the **Board**.
15. Appoint a **custodian** to be the depository and have custody of all the money of SELF pursuant to the California Government Code, Section 6505.5. Such **custodian** shall perform those functions as required by said Code and other applicable law.
16. Establish bank accounts and/or trust funds as appropriate.
17. Provide procedures for election of the **Board** of Directors.
18. Provide for other services as necessary.

IV. BYLAWS

SELF shall be governed by this Agreement and the **Bylaws** which are incorporated herein by reference. **Parties** to this Agreement are bound by the provisions of the **Bylaws**. In the event that there is a conflict in the provisions of this Agreement and the **Bylaws**, this Agreement shall prevail over the **Bylaws**.

V. TERM OF AGREEMENT

This Agreement shall continue in effect unless and until it is terminated as provided for in Section IX of this Agreement.

VI. MEMBERSHIP

- A. Eligibility: **Public educational agencies** within California may become **parties** to this Agreement upon application to and approval by the **Board**. **Parties** may participate in any one or more **programs** operated by SELF.
- B. Successors: Should a **party** to this Agreement reorganize in accordance with State law, the successor or successors in interest to such **party** may be substituted as a **party** or **parties** to this Agreement, and such substitution shall become effective upon the filing with the **Board** of an assignment by such **party** to its successor or successors in interest of all of said **party's** rights and obligations hereunder, provided such assignment is fully executed by the **party** to this Agreement and its successors.

VII. WITHDRAWAL OF A PARTY

A **party** to this Agreement may cease to be a **party** hereto or may discontinue participation in any **program**, and may withdraw as a **party** to this Agreement or from any **program**, in the manner hereinafter provided:

- A. Three (3) Fiscal Years' Participation: No party to this Agreement may withdraw from a program until it has been a party to such program for at least three (3) consecutive, full fiscal years.
- B. Resolution of Withdrawal: To effect withdrawal from this Agreement, or from any **program** (e.g., Liability or Worker's Compensation) in which a **party** is participating, such **party**, by its governing body, shall adopt a resolution stating that it is going to withdraw from SELF or from the SELF program, effective July 1 of that year or the following year.
- C. Notice of Withdrawal: A **party** that is going to withdraw shall cause to be sent to the **Board** a true copy of the resolution of its governing body stating that it is going to withdraw.
- D. A **party** which is going to withdraw shall serve its notice of withdrawal upon the **Board** in the manner provided in this **Agreement** (at **Section XIV** hereof, *infra*) for the giving of

notice. As long as the notice of withdrawal is received in the SELF office by the close of business on December 31, the notice shall be effective on the last day of SELF's **fiscal year** during which the notice of withdrawal was given. If the notice of withdrawal is received in the SELF office after the close of business on December 31, the effective date of such withdrawal shall be on the last day of SELF's **fiscal year** following the fiscal year in which the notice was given.

- E. Continuing Obligations of a Withdrawing **Party**: A **party** withdrawing from a **program** may be entitled to a share of any equity distributions, if any, or be liable for its share of any assessments, if any, declared by the **Board**. After considering reserves for **claims** reported and **claims** incurred but not reported, the **Board** shall make a determination as to whether to declare any equity distribution or impose any loss assessment, that is based on the overall fiscal impact of the withdrawal on the **program** pool, and that fosters the preservation of the fiscal integrity of the **program** pool. In no event will any equity distribution be made to a withdrawing **party** until after five (5) years have elapsed from the date the **party** withdrew from the **program**. In addition, the withdrawal of a **party** from a **program** shall not relieve such **party** of any obligations that such **party** otherwise has in connection with **claims** which arose while said withdrawn **party** was a participant in such **program**.

VIII. INVOLUNTARY TERMINATION OF MEMBERSHIP IN SELF

- A. A **party** may be involuntarily terminated from **SELF** for failure to pay contributions or assessments to **SELF** when due; failure to report claims in a timely manner; failure to comply with the provisions of the **Memorandum of Coverage, Agreement, or Bylaws**; or for other good cause as determined by the **Board**. In the event of such termination, the terminated **party's** equity or deficit position while a participant in any **SELF program** will continue to be reflected in the records and reports required under "**Article XIII, Accounts and Records**," in the **Bylaws**, and the provisions of **Section VII, Paragraph E** of this **Agreement, supra**, shall also apply to such terminated **party**.

IX. TERMINATION OF AGREEMENT

The governing bodies of the **parties** may determine that the public interest will not be served by the continuance of this Agreement. In such event, by a two-thirds (2/3) vote of the total number of **parties** voting in favor of termination, this Agreement shall be terminated effective at the end of the **fiscal year** specified by such parties at the time of voting. The **Board** shall provide for the continued administration of SELF business during the period of up to ten (10) years as referred to in Section X, *infra*.

X. DISTRIBUTION OF PROPERTY AND MONIES UPON TERMINATION OF THIS AGREEMENT

- A. Reserve Account: Upon any termination of this Agreement, the **Board** shall provide or cause to be provided, **program** reserve accounts for a period of up to ten (10) years for the purpose of paying all legal obligations hereunder, and such obligations shall include but not be limited to, all payments required to be established for the purpose of paying **claims**, and any other legal obligations incurred by the **Board** pursuant to this Agreement. At the end of such period of up to ten (10) years, the **Board** or its designee shall make no more payments in connection with **claims** which arose while the Agreement was in effect and any such liability shall revert to the individual **parties** to this Agreement. In lieu of liabilities reverting to the individual parties, the Board may, at its discretion, arrange for the transfer of such liabilities through the purchase of commercial insurance.
- B. Distribution of Assets: Upon termination of this Agreement, all assets remaining after the establishment of the reserve accounts shall be distributed to the then current **parties** to this Agreement in proportion to each **party's** cumulative **contributions** relative to the cumulative **contributions** of all **parties**.

XI. LIABILITIES

- A. **Claims** Indemnification and Hold Harmless: Each **party** to this Agreement shall be liable for its *pro rata* share of all of the debts and liabilities of the **parties** hereto for **claims**. A **party's** *pro rata* share shall be determined by such **party's** cumulative contributions and assessments relative to the cumulative contributions and assessments of all **parties** to this Agreement. To achieve such purpose, each **party** hereby indemnifies and holds harmless the other **parties** for any loss, cost, or expense that may be imposed upon such other **party** in excess of such *pro rata* liability. The rules for interpreting indemnity agreements as set out in Civil Code Section 2778 are hereby expressly made a part of this Agreement.
- B. Other Debts, Liabilities and Obligations: Except as otherwise provided in paragraph A of this Section, the debts, liabilities and obligations incurred in the administration of this Agreement shall not constitute any debt, liability or obligation of any of the individual **parties** to this Agreement, and the **Board** as administrator of this Agreement may insure all or any part of any liability incurred by it hereunder. The cost of such insurance shall be an administrative expense of the **Board** and it shall be expended from the appropriate **funds** in the same manner as other administrative expenses.

XII. AMENDMENTS TO THIS AGREEMENT

- A. Any amendment to this Agreement shall require that once a majority of the **parties** to the Agreement have voted on a proposed amendment properly approved by the SELF **Board**, approval by two-thirds (2/3) of the voting **parties** shall be sufficient to enact the proposal. As to amendments to this Agreement, a **party** may cast an individual vote or a joint powers agency whose members are **parties** to this Agreement may cast the votes on behalf of all

of its members, so long as the joint powers agency and its members have expressly so agreed, in writing.

- B. Proposed Amendments: Any **party** to this Agreement may at any time propose amendments to this Agreement. Any proposed amendment shall first be submitted to the **Board** for study and recommendation. The **Board** shall have a reasonable time within which to make such study and to submit its recommendations to the **parties**. Recommendation for adoption of an amendment shall occur at a meeting wherein twothirds (2/3) of the **members** are present and at least three-fourths (3/4) of such **members** vote for adoption. A copy of the proposed amendment, together with the **Board's** report and recommendation, shall be sent to all **parties** for action by their governing bodies either approving or rejecting the amendment. If the proposed amendment does not receive approval by vote of the **Board**, no further action shall be required.
- C. Action on a Proposed Amendment: When the **Board** submits to the **parties** a proposed amendment for action, the **Board** shall specify thereon the deadline for action by the **party** or **parties**. Within the deadline specified, each **party** shall consider the proposed amendment and take action, either approving or rejecting it, and a copy of such action shall be filed with the **Board**. Responses must be post-marked on or before the deadline, in order to be counted. In the event fifty per cent (50%) of the parties have not responded by the deadline, the **Board** may, at its discretion, extend the deadline.
- D. Effective Date of Amendment: Unless otherwise stated in the amendment, the effective date of any amendment shall be on July 1 following its adoption.

XIII. TORT LIABILITY

Section 895.2 of the Government Code imposes certain tort liability jointly upon public entities solely by reason of such entities being **parties** to an agreement as defined in Section 895 of said Code. Therefore, the **parties** hereto, as between themselves, pursuant to the authorization contained in Sections 895.4 and 895.6 of the Government Code, each assumes the full liability imposed upon it or any of its officers, agents, or employees by law for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, to the same extent that such liability would be imposed in the absence of Section 895.2 of the Government Code. To achieve this purpose, each **party** hereby agrees to indemnify and hold harmless the other **parties** for any loss, cost or expense that may be imposed upon such other **parties** solely by virtue of Section 895.2 of the Government Code.

XIV. NOTICE AND SERVICE THEREOF

Any notice given pursuant to this Agreement shall be in writing and shall be dated and signed by the party giving, and duly authorized to give, such notice. Notices to SELF shall be delivered to SELF's principal place of business, which is currently 1531 "I" Street, Suite 300, Sacramento, California 95814.

XV. SEVERABILITY

Should any portion, term, condition, or provision of this Agreement be determined 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 remaining portions, terms, conditions, and provisions shall not be affected thereby.

XVI. MISCELLANEOUS

- A. The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section to which they refer.
- B. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.
- C. By execution of this Agreement the executing **party** certifies that it has read the currently adopted **Bylaws**, and agrees to comply therewith and with future **Bylaws** as approved by the **Board** in the exercise of its powers under this Agreement.

XVII. EFFECTIVE DATE

Notwithstanding Article XII, Paragraph D, this Agreement shall become effective immediately upon its adoption by two-thirds (2/3) of the **parties** voting thereon, as more specifically set forth in Section XII, Paragraph A., *supra*.

IN WITNESS WHEREOF, each of the **parties** hereto has caused this **JOINT POWERS AGREEMENT** to be executed as an original counterpart by its duly authorized representative on the date indicated below.

Date: November 12, 2020

Name of Public Educational Agency: Black Oak Mine Unified School District

Address: 6540 Wentworth Springs Road

City, State: Georgetown, California **Zip Code:** 95364

Telephone Number: 530-333-8300 **Facsimile Number:** 530-333-8303

School District Number: _____

By: _____