

JOINT POWERS AGREEMENT OF THE WEST SIDE EDUCATION AUTHORITY

This is a Joint Powers Agreement ("Agreement") pursuant to the provision of Title 1, Division 7, Chapter 5, Article 1 of the Government Code of the State of California (commencing with Section 6500) ("Act") relating to the joint exercise of common powers. This Agreement is entered into and among those public agencies duly formed and operating within the boundaries of the State of California which are or may hereafter become parties to this Agreement for the purposes set forth herein.

Each of the agencies executing this Agreement shall individually be referred to as a "Member" and/or "Member District" or collectively referred to as "Members" or "Member Districts."

RECITALS

WHEREAS, it is to the mutual benefit of the Members and in the best public interest of said Members to join together to establish this Joint Powers Agreement to accomplish the purposes hereinafter set forth; and

WHEREAS, the Members are each empowered, pursuant to the Act to execute agreements with other public agencies to jointly exercise powers commonly held by each of the contracting public agencies and other powers applicable to joint powers agencies by the law; and

WHEREAS, each of the Members has the powers necessary to accomplish the purposes of this Agreement and the foregoing purposes will be accomplished and the common powers exercised in the manner hereinafter set forth; and

WHEREAS, the cost of living in Silicon Valley, including the cost of housing, transportation, childcare, food, and other essentials, is one of the highest in the nation, and continues to rise;

WHEREAS, the high cost of living, specifically the high cost of housing, has made it difficult for Silicon Valley school districts to recruit and retain teachers and classified employees;

WHEREAS, it is the intention of the Members to work together to identify and implement innovative resources and projects to mitigate the cost of living for school district employees so as to aid in recruitment and retention of such employees;

WHEREAS, the Members intend to come together to examine a variety of resources and projects to serve this purpose, which may include housing for employees, assistance with transportation costs, provision of childcare, and other ways in which the Members may work together to encourage and allow teachers and classified employees to seek and continue employment with the Members;

WHEREAS, the Members agree that it would be mutually beneficial to join together to establish the West Side Education Authority ("Authority"), a separate legal entity, for this purpose; and

NOW, THEREFORE, for and in consideration of the mutual benefits, promises and agreements set forth herein, the parties hereto AGREE as follows:

ARTICLE I

THE AUTHORITY

Section 1: Purpose and Formation

1.1 Purpose of Authority. The Members, all acting by and through their governing boards, enter into this Agreement for the purpose of identifying and implementing methods and projects to support and facilitate the recruitment and retention of employees of the Members. This purpose will be accomplished and said common powers exercised in the manner set forth in this Agreement.

1.2 Creation of Authority. Pursuant to section 6507 of the Act, there is hereby created a public entity known as the Authority. Said separate public entity shall possess the full authority for the purposes of exercising the common powers of the Members relating to the purposes and powers set forth herein. The Authority shall be a public entity separate and apart from the Members.

Section 2: Powers

2.1 Enumerated Powers. The Authority shall have no other powers other than to exercise all the powers to do or cause to be done those things necessary to accomplish the powers provided herein and the purposes of this Agreement as set forth in section 2 hereof. The Authority is hereby authorized and empowered, in its own name, to do or cause to be done all acts necessary for the exercise of said limited power, including but not limited to any or all of the following:

2.1.1 To identify, plan for, coordinate, create, fund, finance, implement, operate and manage services, facilities, and programs, and otherwise act, to support and facilitate the recruitment and retention of employees of the Members.

2.1.2 To establish and maintain educational or other programs.

2.1.3 To make and enter into contracts of every kind with the United States, any state or political subdivision thereof, and any individual, firm, association, partnership, corporation, or any other organization of any kind.

2.1.4 To enter into partnerships with any state or political subdivision thereof, and any individual, firm, association, partnership, corporation, or any other organization of any kind.

2.1.5 To enter into joint powers agreements.

2.1.6 To form a non-profit corporation for the purposes of carrying out any of the Authority's powers.

2.1.7 To apply for and obtain local, State, federal, or other funding.

2.1.8 To employ employees, agents, consultants, counsel, and other independent contractors.

2.1.9 To issue, or cause to be issued, bonds, loans, notes or other debt obligations for the purposes of exercising its powers and raising funds necessary to carry out its purposes under this Agreement. In connection therewith, any bonds, loans, notes or other debt obligations issued or caused to be issued by the Authority shall not be deemed to constitute a debt of any Member or a pledge of the faith and credit of any Member.

2.1.10 To acquire, lease, construct, provide for the maintenance and operation of, or maintain and operate, any buildings, works or improvements.

2.1.11 To hold or dispose of property.

2.1.12 To receive gifts, contributions and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, and any government entity.

2.1.13 To make grants, loans or provide other financial assistance to governmental and nonprofit and for profit organization to accomplish any of the Authority's purposes.

2.1.14 To create assessment districts, impose special taxes, or assessments pursuant to the laws of the State of California.

2.1.15 To carry insurance.

2.1.16 To sue and be sued in its own name.

2.1.17 To receive, accept, and expend or disburse funds by contract or otherwise, for purposes consistent with the provisions hereof and shall have the duty to maintain at all times a complete and accurate system of accounting for said funds.

2.1.18 To exercise any other power permitted by the Act reasonable and necessary to carry out the purposes of this Agreement.

2.2 Delegation. The Authority, through its Board, may delegate any of its functions to one or more of the Directors, officers, employees, if any, or agents of the Authority, or to one or more of the governing board members, officers, employees, if any, or agents of a Member, and to cause any of said Directors, governing board members, officers, employees, if any, or agents to take any actions and execute any documents or instruments for and in the name and on behalf of the Board of Directors or the Authority.

2.3 Boundaries. The boundaries of the Authority shall encompass the boundaries of all Members, and the powers of the Authority may be exercised anywhere within those boundaries or to the extent permitted by the laws of the State of California, including, but not limited to the Act, outside of those boundaries, which may be outside the State of California.

2.4 Restrictions on Powers. Pursuant to section 6509 of the Act, all common powers exercised by the Authority shall be exercised in the manner provided in the law, and except as expressly provided herein, subject only to such restrictions upon the manner of exercising such powers as are imposed upon the Lead District.

Section 3: Term of Agreement

3.1 Effective Date. This Agreement shall become effective and binding on the Members upon the approval of each Member's governing board and the authorized execution of this Agreement by the duly authorized agent of each Member. This Agreement shall continue from fiscal year to fiscal year thereafter, unless terminated by written agreement of all Members.

3.2 Termination. If the Authority has no outstanding debts including outstanding bonded indebtedness, the Agreement may be voluntarily terminated upon written consent of all Members.

Section 4: Membership

4.1 Initial Membership. The Authority shall initially be composed of the Members who execute this Agreement:

4.1.1 Cupertino Union School District

4.1.2 Fremont Union High School District

4.1.3 Sunnyvale School District

4.2 Additional Members. Additional Members may be added to this Agreement by written amendment among all of the then-current Members with the approval of their governing boards.

4.3 Reorganization of Member. This Agreement shall be binding upon all and shall inure to the benefit of the successors of the Members. If a Member is reorganized under the Education Code, its obligations under this Agreement shall become the obligations of its successor under Education Code sections 35560 and 35736, and the surviving school district shall be substituted as a Member of this Agreement.

4.4 Withdrawal. A party may cease to be a Member and withdraw from this Agreement upon written consent of all Members. The withdrawing Member must satisfy the other Members that the withdrawing Member has paid its share of debts and obligations to the Authority before withdrawal becomes effective.

ARTICLE II

BOARD OF DIRECTORS

Section 5: Board of Directors

5.1 Role. The Authority shall be controlled by the Board of Directors. The Board of Directors shall instruct the Lead District on the administration of the Authority.

5.2 Powers. The Board of Directors may exercise and shall be vested with all powers of the Authority insofar as not inconsistent with law or this Agreement.

5.3 Composition. The Board of Directors shall consist of two Directors from each Member.

5.4 Appointment. Each Member shall determine how it appoints its two Directors.

Section 6: Officers

6.1 Officers. The Board of Directors shall have the following officers: chairperson and clerk. These officers shall be elected by the Board annually.

6.2 Chairperson. The chairperson shall preside at and conduct all meetings of the Board. In the absence or the inability of the chairperson to act, the clerk shall act as chairperson.

6.3 Clerk. The clerk shall insure that all meeting notices and agendas are posted as required by law, provide copies of the minutes of each meeting of the Board of Directors to the Directors pursuant to section 7.4, and take action to fulfill any additional notice requirements.

6.4 Voting. Each Director shall have one vote on all matters calling for a vote. When a quorum is present at a meeting of the Board of Directors, the Board of Directors shall decide any question by majority vote of the full Board of Directors, regardless of the number present at a meeting. However, the Board of Directors may not take any action without the affirmative vote of at least one Director from each Member.

6.5 No Compensation. No Director shall receive any compensation from the Authority for his or her service on the Board of Directors.

Section 7: Meetings

7.1 Compliance with Brown Act. All meetings of the Board of Directors, including, without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held, and conducted in accordance with the provisions of the Brown Act or any successor legislation hereinafter enacted.

7.2 Regular Meetings. The Board of Directors shall hold regular meetings. The date, time, and place of the Board of Directors' regular meetings shall be fixed by resolution of the Board of Directors at its first meeting. The Board of Directors may change the date, time, and place of any regularly scheduled meeting by resolution. The Board of Directors must provide a copy of any resolution establishing or changing the date, time, or place of any Board of Directors meeting to each Member.

7.3 Special Meetings. Special meetings of the Board of Directors may be called in accordance with the provisions of section 54956 of the California Government Code.

7.4 Minutes. The Board of Directors shall cause to be kept minutes of the meetings of the Board of Directors, both regular and special, and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director.

7.5 Quorum. A majority of Directors, including at least one Director from each Member, shall constitute a quorum for the transaction of business including any members attending electronically/telephonically pursuant to the provisions of the Brown Act, except that, if less than a majority is present at a meeting, any Director who is present may adjourn the meeting.

ARTICLE III

ADMINISTRATION OF THE AUTHORITY

Section 8: Lead District

The Fremont Union High School District is hereby designated as the initial Lead District for purposes of administering this Agreement on behalf of the Authority, pursuant to section 6506 of the Act.

Section 9: Duties of the Lead District

9.1 Duties. As described in those provisions, and herein, at the direction of the Board of Directors the Lead District shall:

9.1.1 Implement directions given by the Board of Directors.

9.1.2 Provide day-to-day administration of the Authority consistent with this Agreement.

9.1.3 Disseminate information to and solicit input from the Members;

9.1.4 Coordinate the efforts of the Members relative to this Agreement;

9.1.5 Conduct the selection, direction, monitoring, supervision and evaluation of any consultants or contractors under contract with the Authority in the manner prescribed by law and in accordance with Lead District policies and procedures and standard practices.

9.1.6 Oversee authority recordkeeping and the maintenance of Authority records.

Section 10: Costs and Expenses

10.1 Operating Costs. The operating costs of Authority shall include the cost of any consultants necessary for operation of the Authority, audits, legal counsel, insurance, the Lead District's overhead and expenses and proportion of the salary and benefits of Lead District employees assigned to perform Authority related duties, and any other costs incidental to the operation of Authority. Operating costs shall not include any expenses incurred as part of any program or initiative pursued by the Authority.

10.2 Operating Budget. The Lead District shall develop and submit the annual operating budget for the upcoming budget year, including all operating costs to the Board of Directors by April 1. The Board of Directors shall adopt a budget for the upcoming fiscal year no later than June 15. Such budget shall identify the contribution to be provided by each Member.

10.3 Costs Associated with Programs and Initiatives. As needed, the Board shall determine the appropriate level of funding from Members or others for expenses associated with programs or initiatives pursued by the Authority.

Section 11: Treasurer and Auditor

11.1 Designation. The treasurer of the Authority shall be the chief business officer of the Fremont Union High School District.

11.2 Duties. The treasurer of the Authority shall receive and have custody of, and disburse funds held by the Authority and shall make disbursements required by this Agreement and any other agreement with the Authority. The treasurer of the Authority shall invest Authority Funds in accordance with the general law. All interest collected on Authority Funds shall be accounted for and deposited to the account of said funds. The treasurer shall have all other powers, duties, and responsibilities of such office as specified in section 6505.5 of the Act.

11.3 Auditor. The chief business officer of the Lead District shall also act as the Auditor of the Authority pursuant to section 6505.5 of the Act.

11.4 Audits. Pursuant to section 6505.6 of the Act, the Authority shall cause independent audits to be made in compliance with section 6505 of the Act by an outside independent auditor. The Board of Directors shall select the independent auditor to perform this audit.

11.5 Bonding. The Authority and its officers shall comply with the bonding requirements of section 6505.1 of the Act where applicable.

Section 12: Authority General Fund

12.1 General Fund. The Lead District shall establish a General Fund in the County School Service Fund of Santa Clara County in which shall be placed all monies received pursuant to this Agreement or any other agreement with the Authority. Only bona fide and appropriate costs in performing the purposes and services hereunder shall be charged to and expensed against such General Fund. The Lead District further agrees to make an annual accounting to each of the Members of activity in and status of this General Fund and provide annually for an independent audit of the General Fund.

12.2 Administration. The Lead District shall receive, deposit, and account for payments to and from the General Fund.

ARTICLE IV

MISCELLANEOUS PROVISIONS

Section 13: Disposition of Property and Funds Upon Termination

13.1 Distribution of Assets. Upon termination pursuant to Section 4.3, an equal share of any total assets of the Authority less total liabilities will be distributed to each Member.

13.2 Winding Up. The Authority will continue to exist after termination for a period no longer than necessary to wind up its affairs and fulfill its legal and financial obligations, but for no other purpose.

Section 14: Independent Authority of Members

Nothing contained in this Agreement shall be construed as limiting the power of the Members from taking action within their respective jurisdictions or entering into other joint powers agreements with other Members or other public agencies.

Section 15: Amendments

The terms of this Agreement may be amended in any particular, from time to time, with approval of the governing boards of each of the Members. Provided, however, that no authority on which action has been taken by the Authority or the Lead District shall be limited or withdrawn and no such amendment shall cause the Authority or the Lead District to violate any condition or restrictions or any contract of the Authority or the Lead District.

Section 16: Enforcement of Authority

The Authority is hereby authorized to take any or all legal or equitable actions, including but not limited to injunction and specific performance, necessary or permitted by law to enforce this Agreement.

Section 17: Breach

If the Authority or any Member shall breach any term, covenant, or condition contained in this Agreement, such party shall be deemed to be in default under this Agreement, and the non-defaulting parties shall each have the right to enforce all of its rights and remedies regarding such default which are provided under State or federal laws.

Section 18: Liability, Indemnity, and Defense

18.1 Debts, Liabilities and Obligations of the Authority. Pursuant to section 6508.1 of the Act, the debts, liabilities, and obligations of the Authority shall be its own and shall not be or constitute debts, liabilities, and obligations of the Members.

18.2 Defense and Indemnity of Lead District and Members. The Authority shall defend and hold harmless the Lead District and Members from all liability and damages resulting from actions by the Authority, its Board of Directors, officers, employees, or agents, when acting on behalf of the Authority.

18.3 Members' Liability. Each Member is solely liable for any claims, suits, and liability, including payment of any judgment and attorneys' fees and costs, caused solely by that Member and/or its governing body and members thereof, officers, employees, or agents except when a Member or its officers, employees, or agents are acting on behalf of the Authority or the Lead District.

18.4 Defense and Indemnity of Individuals. No member, officer or employee of the Authority or the Members shall be individually or personally liable for any claims, losses, damages, costs, injury and liability of every kind, nature and description arising from the actions of the Authority or the actions undertaken pursuant to this Agreement, and the Authority shall defend such members, officers or employees against any such claims, losses, damages, costs, injury and liability. Without limiting the generality of the foregoing, no member, officer or employee of the Authority or of any Member shall be personally liable on any bonds or other debts or obligations be subject to any personal liability or accountability by reason of the issuance of bonds or other debts or obligations pursuant to the Act and this Agreement. To the full extent permitted by law, the Board of Directors shall provide for indemnification by the Authority of any person who is or was a member of the Board of Directors, or an officer, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a member of Board of Directors, or an officer, employee or other agent of the Authority, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in the course and scope of his or her office, employment or agency. In the case of a criminal proceeding, the Board may provide for indemnification and defense of a member of the Board of Directors, or an officer, employee or other agent of the Authority to the extent permitted by law.

Section 19: No Third Party Beneficiaries

This Agreement and the obligations hereunder are not intended to benefit any party other than the Authority and its Members, except as expressly provided otherwise herein. No entity not a signatory to this Agreement shall have any rights or causes of action against any other party to this Agreement as a result of that party's performance or non-performance under this Agreement, except as expressly provided otherwise herein.

Section 20: Severability

If any one or more of the terms, provisions, promises, covenants, or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void, or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

Section 21: Successors; Assignment

This Agreement shall be binding upon and shall inure to the benefit of the successors of the Members. Except to the extent expressly provided herein, Members may not assign any right or obligation hereunder without the consent of the other Members.

Section 22: Notices

Notices to the Members hereunder shall be sufficient if delivered to the Directors of each of the Members, respectively.

Section 23: Filing of Notice of Agreement

23.1 Secretary of State Notice. Within 30 days after this Agreement becomes effective, the Lead District shall file with the Secretary of State the notice of Agreement required by section 6503.5 of the Act.

23.2 State Controller Notice. Within 30 days after this Agreement becomes effective, the Lead District shall file with the State Controller the notice of Agreement required by section 6503.6 of the Act.

23.3 County Clerk Notice. Within 70 days after this Agreement becomes effective, the Lead District shall file with the Secretary of State and the County Clerk of the County of Santa Clara the notice required by section 53051 of the California Government Code.

Section 24: Conflict of Interest

If allowable by applicable law, the Authority shall waive any conflict of interest as to representation by counsel if that conflict arises or may arise in connection with counsel's representation of one of the Members or another public agency. The Authority shall, by resolution, adopt a conflict of interest code to the extent required by law.

Section 25: Section Headings

All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing the language in the section referenced to or to define or limit the scope of any provision of this Agreement.

Section 26: Governing Law

California's laws govern this Agreement's construction and interpretation. Unless this Agreement provides otherwise, any reference to laws, ordinances, rules, or regulations include their later amendments, modifications, and successor legislation.

Section 27: No Drafting Party & Acknowledgement of Prudent Review

27.1 Drafting Presumption. The Members have jointly drafted, reviewed with counsel, and approved this Agreement so no presumption against any Member arising from the drafting of this Agreement may affect its interpretation.

27.2 Opportunity to Review and Seek Counsel. Each Member declares it has had an opportunity to review and understand the contents, rights, and responsibilities herein. The Members have further had the opportunity to seek independent legal advice regarding this Agreement.

Section 28: Entire Agreement

This Agreement constitutes the entire agreement and understanding between the Members and is a complete and exclusive statement of the terms of the Members' agreement pursuant to section 1856 of the California Code of Civil Procedure.

Section 29: Execution of Counterparts

This Agreement may be executed in any number of counterparts. All such counterparts shall be deemed originals and shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Members have executed this Agreement on the dates indicated below.

CUPERTINO UNION SCHOOL DISTRICT

By: _____
Stacy Yao,
Superintendent

Date: _____

FREMONT UNION HIGH SCHOOL DISTRICT

By:  _____
Polly Bove,
Superintendent

Date: 9/7/2021

SUNNYVALE SCHOOL DISTRICT

By: _____
Dr. Michael Gallagher,
Superintendent

Date: _____