

JOINT EXERCISE OF POWERS AGREEMENT
AMONG SPECIFIED PUBLIC EDUCATIONAL
AGENCIES FOR THE OPERATION OF
A PURCHASING CONSORTIUM

Pursuant to the provisions of Title 1, 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 which are or may hereafter become parties to this Agreement for the purposes set out herein.

WITNESSETH

WHEREAS, the public interest requires and it is to the mutual benefit of the parties hereto to join together to establish and operate a cooperative program to purchase materials, supplies, equipment and services; and

WHEREAS, each of the public educational agencies which is a party to this Agreement has the power to purchase materials, supplies equipment and services (public contracts code section 20111); and

WHEREAS, Title 1, 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 benefits, promises and agreements set forth herein, the parties hereto AGREE as follows:

1. DEFINITIONS

Unless otherwise stated herein, the following words shall have the meanings stated:

A. "Fiscal year" means the period of time commencing on July 1 and ending June 30;

B. "Party" means a public educational agency which is a party to this Agreement;

C. "Public educational agencies" means any school district, community college district, county board of education/county superintendent of schools.

2. PURPOSE

The purpose of this Agreement is to exercise the powers to purchase materials, supplies, equipment and services jointly by

combining the purchasing requirements of each of the parties and thereby enabling them to order materials and supplies from a contract awarded pursuant to this Agreement. This purpose will be accomplished and said common powers exercised in the manner set forth in this Agreement.

3. SEPARATE ENTITY

Pursuant to Section 6506 of the Act, there is hereby created a public entity, separate and apart from the parties hereto, to be known as the "North County Educational Purchasing Consortium" (hereinafter referred to as "Consortium"). The debts, liabilities and obligation of each of the parties shall not constitute debts, liabilities or obligations of the Consortium.

4. TERM OF AGREEMENT

This Agreement shall continue in effect until it is rescinded by mutual consent of the parties or terminated as herein provided.

5. ADMINISTRATION

The Consortium shall be composed of one representative from each of the parties. The representative and an alternate shall be designated by the Governing Board/Administration of the respective parties. The Consortium shall have a Governing Board comprised of all of its members. The Board shall be known as the Joint Purchasing Board (hereinafter "Board").

The Board shall perform the following services:

A. Meetings: Meet periodically for the purpose of preparing specifications for the various types of materials, supplies, equipment and services which may be jointly purchased and to handle related business. All meetings of the Board including without limitation regular, adjourned regular, and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (Gov. Code, S 54950 et seq.).

B. Attendance at Meetings. All duly appointed representatives and alternates shall be invited to attend all meetings of the consortium.

C. Voting Rights. Each party to this Agreement shall have one seat on the consortium. A party's representative or alternate representative shall be entitled to cast one vote for normal business conducted by the consortium. A vote may be cast only by the duly appointed representative who is personally present at the meeting or in his/her absence by his/her alternate who is personally present at the meetings. There shall be no proxy votes and no absentee voting.

D. Quorum: A quorum of the Board shall consist of a majority of the representatives or their alternates.

E. Application to Become Party to this Agreement. Applications of public educational agencies to become parties to this Agreement shall be considered by the consortium. The consortium shall recommend the financial arrangements and contributions to be made by the new party, and shall by majority vote of those present at a meeting at which a quorum is present recommend for or against acceptance of the new party, and shall establish the deadline for action by the parties.

F. Hold Meetings. Meetings of the consortium shall be held at least every one hundred twenty (120) days, at a time and place as designated by the board.

G. Board Officers: The officers of the Board shall consist of a President, 1st Vice-President, 2nd Vice-President, and Secretary. They shall be elected by the consortium from among themselves on a single vote per representative basis.

H. Term of Office. Officers shall be elected once a year on a fiscal year basis.

I. Notice of Meetings. Notices of meetings shall be sent by mail to each consortium member.

J. Conduct of Meetings. Unless otherwise determined by the consortium, the meetings shall be conducted pursuant to the most current edition of Robert's Rules of Order.

K. Business of the Consortium. The business of the consortium shall include review of the administrative operations and administrative budget under this Agreement, and the making of recommendations with respect hereto.

L. Minutes. The secretary shall cause to be kept minutes of all meetings of the board and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each representative.

M. Compensation. No representative or alternate shall receive any compensation or remuneration from the funds contributed by the parties under this Agreement.

N. Notices: Notices of meetings shall be sent by mail to each duly appointed representative.

O. List: The Board shall supply each of the parties with a list of those items upon which joint specifications are to be prepared and shall amend said list from time to time as required.

P. Award of Bid: Award bids to the lowest responsible bidder as determined and contract with the person or entity approved to provide materials, supplies, equipment and/or services.

Q. Designate parties: Designate parties responsible for issuing bids, acting as agents on behalf of the Consortium.

R. Other Services: Perform other services related to the above necessary to effectuate the purposes of this Agreement.

6. PARTIES TO THIS AGREEMENT

A. Eligibility. Public educational agencies within California may become parties to this Agreement as hereinafter provided.

B. Initial Parties. Those public educational agencies who authorized the participation in and who execute this Agreement on or before July 25, 1985, shall be the initial parties hereto. A counterpart original copy of this Joint Powers Agreement shall be filed with the Board, and the initial parties' participation shall be deemed effective on July 25, 1985.

C. Other Parties. After this Joint Powers Agreement becomes effective for all purposes, public educational agencies may become parties to this Agreement upon application to the Board and affirmative vote of a majority of the Board members. Any new party shall execute a counterpart original copy of this Joint Powers Agreement and unless otherwise provided, said new party's participation shall become effective upon the filing of the same with the Board.

D. 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 successor or successors.

7. WITHDRAWAL OF A PARTY

A party to this agreement may cease to be a party hereto and may withdraw as a party in the manner herein provided.

A. Intention to Withdraw. To effect withdrawal from this Agreement, a party by its governing board shall adopt a resolution of intention to withdraw.

B. Notice of Intention to Withdraw. A party that intends to withdraw shall cause to be sent to all parties to this Agreement a true copy of the resolution of its governing board stating its intention to withdraw.

C. Time of Notice of Intention to Withdraw. Not later than the first day of May before the close of the fiscal year, a party that intends to withdraw shall serve its notice of intention to withdraw upon all parties to this Agreement, in the manner provided herein for the giving of such notice.

D. Effective Date of Withdrawal. The effective date of a party's withdrawal shall be at the end of the fiscal year in which it gave the notice of intention to withdraw.

E. Liability for Obligations Incurred Prior to Withdrawal. A withdrawing party shall remain liable for any debts, liabilities or obligations occurring while it was a party to this Agreement.

8. ITEMS TO BE PURCHASED

The parties shall advise in writing the District designated by the Board to issue bids of the items and quantities to be purchased and the terms of shipment. Said advice shall be sent to the designated District one week prior to advertisement of bids. It is understood that each District shall have the privilege to elect whether or not to join in the purchase of any item(s) for which joint purchasing bids are to be secured.

9. FORMS

The party designated to issue the bid for any item(s) shall be responsible for compiling the forms necessary to advertise for bids. The party issuing the bid shall use standard bid forms approved and adopted by the Board.

10. APPLICABLE LAW

All purchasing under the terms of this Agreement shall be carried out by complying with the applicable provisions of the Education Code and Public Contract Code and other statutes pertaining thereto and shall be made only after competitive bidding, the advertisement of which shall be inserted in newspapers in accordance with law.

11. COSTS AND EXPENSES

The cost of advertising, litigation proceedings, and any other incidental costs shall be divided equally between each of the parties.

12. CONTRACT CHANGES

Each of the parties agree that once the contract has been prepared, approved, and awarded by the majority of the Board, that no changes will be made unless approved by all parties.

13. CERTIFICATION

It is understood and agreed that, after the receipt and opening of the bids, by the designated party, the lowest responsible bid(s) shall be presented to the Board who shall then certify to each of the parties the lowest responsible bidder.

14. DEBTS, LIABILITIES AND OBLIGATIONS

Each participating District shall issue its respective purchase orders. DISTRICTS participating in a purchase shall be billed and shall make payment directly to vendors for their respective portion of joint purchases made hereunder. Under no circumstances shall the Consortium be responsible for payments on account of a District's purchase hereunder. Each party hereby indemnifies and holds harmless the other parties for any loss, cost, or expenses.

15. DISPUTES

In the event that any dispute arises between any of the parties and a successful bidder, the same shall be handled by and between the parties and the bidder.

16. 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 remaining 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 the voting.

17. AMENDMENTS

Any amendment to this agreement shall require the majority consent of the Board and shall be in writing. Unless otherwise stated in the agreement, the effective date of any amendment shall be on July 1, following its adoption.

18. 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 said Code. To achieve this purpose, each party indemnifies and holds harmless the other party for any loss, cost or expense that may be imposed upon such other party solely by virtue of Section 895.2 of the Government Code.

19. ERROR AND OMISSION.

In the event a member or members of the Consortium's Governing Board is involved in an un-intentional act of errors and omissions, the Board members shall be covered by appropriate insurance coverages.

20. NOTICE AND SERVICE THEREOF.

Any notices given pursuant to this Agreement shall be in writing and shall be dated and signed. Any notices shall be effective only if served by personal delivery or by depositing the same in the United States mail, enclosed in a sealed envelope, and addressed to the secretary of the board.

21. INVALIDITY.

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.

22. 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 referred to.

B. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

C. This Agreement shall be construed to create a public entity separate from the parties to the Agreement.

D. The powers of the Board are subject to the restrictions upon the manner of exercising such powers of the N.C.E.P.C.

23. EFFECTIVE DATE.

This Agreement shall become effective at 12:01 a.m. on the 25th day of July 1985.

IN WITNESS WHEREOF, DISTRICTS hereto have caused this Agreement to be executed by an appropriate officer or authorized representative thereof on the day and year first above written.

By *James Star*
Carlsbad Unified

By *Richard L. Papp*
Escondido Union High

By *W. F. Krueger*
Oceanside Unified

By *Arthur J. Abbott*
Poway Unified

By *William Miller*
San Marcos Unified

By *David Hart*
Escondido Union School District

By *J. Valenzuela* Dir. of Finance
Miracosta Community College District

By *W. J. ...*
Palomar Community College

By *...*
San Dieguito Union High

By *Samuelson*
Vista Unified Superintendent of Schools