

**THIRD AMENDED  
JOINT POWERS AGREEMENT**

**TO OPERATE AND MAINTAIN  
A REGIONAL OCCUPATIONAL CENTER/PROGRAM**

**THIS THIRD AMENDED JOINT POWERS AGREEMENT**, dated for identification as December 10, 2009 (“Agreement”), replaces and supercedes the Joint Powers Agreement, dated July 1, 1992 (including the Amendments adopted in 2002 and 2005).

**RECITALS**

1. This Agreement is entered into pursuant to the provisions of Title I, Division 7, Chapter 5, Article 1, Sections 6500 *et seq.* of the California Government Code relating to joint exercise of powers.
2. It is to the mutual benefit of the Member Districts, and in the best public interest, to establish this Joint Powers Agreement to accomplish the purposes set forth below.

**TERMS AND AGREEMENT**

**NOW, THEREFORE**, for and in consideration of the mutual covenants herein and of the mutual benefits to be derived therefrom, each Member District agrees as follows:

**1. Creation**

The Tri-Valley Regional Occupational Center / Program (“TVROCP”), an entity that is separate and apart from the Member Districts, shall continue pursuant to this Third Amended Agreement.

**2. Member Districts**

- a. The Member Districts are Dublin Unified School District, Livermore Valley Joint Unified School District, Pleasanton Unified School District, and Sunol Glen Unified School District. Hereafter, they are referred to individually as “Member District” or collectively as “Member Districts.”
- b. Each Member District is entitled to the rights and privileges, and is subject to the obligations of membership, as provided in this Agreement.

**3. Purpose**

The purpose of the TVROCP shall be to provide services related to the following:

- a. Regional Occupational Center (“ROC”);

- b. Regional Occupational Program (“ROP”);
- c. Adults in Correctional Education Program; and
- d. Other programs and services that are consistent with the purposes for which the TVROCP was created or which may be subsequently amended.

**4. Powers**

- a. The TVROCP is authorized, in its own name, to do all acts necessary to accomplish the purposes set forth in Paragraph 3, above. The TVROCP’s powers shall include, by way of illustration and not limitation, any or all of the following:
  - (1) To make and enter into contracts;
  - (2) To employ agents and employees;
  - (3) To acquire, construct, manage, maintain and operate any buildings, works or improvements;
  - (4) To acquire, hold and dispose of property of all kinds;
  - (5) To incur debts, liabilities or obligations;
  - (6) To sue and be sued.
- b. Such powers shall be exercised subject only to the restrictions upon the manner of exercising such powers that are imposed upon public school districts or ROP programs, as appropriate in California.

**5. Composition of the Governing Board**

- a. The TVROCP shall be administered by its Governing Board (“Board”). The Board may perform all acts necessary to accomplish the purposes set forth above.
- b. The Board shall be composed of one (1) representative from each Member District.
  - (1) Each Representative shall serve at the pleasure of the Member District by which such Representative has been appointed.
  - (2) Each Representative shall be a member of a Member District’s governing board.
  - (3) Each Member District shall provide written notice to the TVROCP of the name of that Member District’s representative. This notice shall be updated when a change occurs.

- c. Board Members are not entitled to compensation. The Board may, however, authorize reimbursement of expenses incurred while engaged in TVROCP business.

## **6. Quorum and Voting Rights**

- a. **Quorum:** A quorum exists when greater than fifty percent (50%) of the Representatives of the Member Districts are present (*e.g.* with four (4) Member Districts, a quorum is three (3)).
- b. **Voting Rights:** Each Member District shall have one (1) vote. A matter on the Board's agenda shall be passed if not less than a majority of the Member Districts cast a vote that is counted in favor of the agenda item.
- c. Notwithstanding 6.b. above, no construction bond may be authorized without a unanimous vote of the Member Districts.

## **7. Officers**

The Board shall, in January of each year, elect a Chairperson and a Vice Chairperson from among the Primary Representatives.

- a. In the event that the elected Chairperson or Vice Chairperson ceases to be an appointed representative to the Board, the resulting vacancy shall be filled at the next meeting of the Board held after such vacancy occurs.
- b. In the absence or inability of the Chairperson to act, the Vice Chairperson shall act as Chairperson.

## **8. Meetings of the Board and Officers**

- a. The Board shall schedule regular meetings at least quarterly each year and may schedule special meetings as deemed appropriate.
- b. All meetings of the Board shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code Sections 54950*et seq.*).
- c. All information received by the Board in closed session shall be confidential. However, a Representative of a Member District may disclose information obtained in a closed session that has direct financial or liability implications for the Member District, to the following individuals:
  - (1) Legal counsel of the Member District for purposes of obtaining advice on whether the matter has direct financial or liability implications for that Member District.

- (2) Other members of the Member District's governing board present in a closed session of a meeting of that Member District's governing board.

**9. Term**

This Agreement shall become effective upon approval by each of the Member Districts. It shall continue until terminated as hereinafter provided.

**10. Changes in Membership**

- a. Other California public school districts may apply for membership.
- b. If membership is approved by the Board, a public school district that applies will become a Member District of the TVROCP upon approval of this Agreement by the governing body of that school district and upon filing of an executed, certified copy of the resolution providing such approval with the TVROCP's Board. Such resolution shall agree to any conditions to membership established by the TVROCP Board.

**11. Reports**

Each Member District shall provide the TVROCP with such information as is reasonable and necessary for the TVROCP to perform its functions under this Agreement. Each Member District shall cooperate in every reasonable manner.

**12. Fiscal Years**

The fiscal year for the TVROCP shall be July 1<sup>st</sup> through the next following June 30<sup>th</sup>.

**13. Budget**

The Board shall adopt a budget for each fiscal year in accordance with applicable law.

**14. Debts, Liabilities and Obligations**

The debts, liabilities and obligations of the TVROCP shall not be the debts, liabilities and obligations of the Member Districts.

**15. Assets and Obligations**

- a. Categories: The categories of tangible assets of the TVROCP are: permanent buildings; relocatable buildings or non-permanent buildings; administrative and instructional equipment; cash; and accounts receivable. (With respect to cash and accounts receivable, see 20.b. for a description of: "Annual Operating Funds"; "Other Funds, Grants and Apportionments.")

- b. Determination of Category: The California School Accounting Manual shall be used to determine the category of each asset.
  
- c. Pro Rata Allocation: In the case of either a withdrawal of a Member District or a termination of this Agreement, assets and obligations shall be allocated on the basis of one of the following:
  - (1) If the asset or obligation is the subject of an MOU between the TVROCP and a Member District, in accordance with the terms of that MOU.
  - (2) In all other cases, based on the percentage of total TVROCP ADA generated by the affected district(s) as compared to the total TVROCP ADA generated by all Member Districts. Generated ADA shall be measured from the date the affected district(s) became a Member District to the day of the last fiscal year of participation by the affected district(s).
  
- d. Valuation:
  - (1) Permanent Buildings. The value of any permanent buildings, and/or property and/or sites which have been acquired using TVROCP monies shall be the amount of TVROCP monies used to acquire said assets. It shall include, but is not limited to, architect fees, plan fees, specification fees, etc.
  - (2) Non-permanent Buildings. The value of purchased relocatable and/or non-permanent buildings shall be the current fair-market value, but shall not exceed the original price. It shall include, but is not limited to, architect fees, plan fees, specification fees, etc.
    - (a) The current fair-market value of relocatable and/or non-permanent buildings shall be determined by the Board.
    - (b) If a withdrawing district disagrees with the determination of the current fair-market value of the Board, the current fair-market value of the properties shall be determined by an independent appraiser. The appraiser shall be agreed upon by the Board and the withdrawing district(s). If the withdrawing district(s) cannot agree upon the selection of an appraiser with the remaining members of the Board, the districts shall request the County Superintendent of Schools to select the appraiser. The withdrawing district(s) shall pay all costs incurred in connection with the appraisal unless otherwise agreed.
  - (3) Equipment. The value of administrative and instructional equipment assets shall be the dollar value recorded, as per California Education Code 35168, in the TVROCP inventory record book at the time of purchase or investment less ten percent (10%) of purchase price for each year after the

date of purchase up to a maximum of nine (9) years. After nine (9) years, the assets shall have a value of ten percent (10%) of the purchase price.

- (4) Cash and Accounts Receivable. The pro rata allocation set forth in paragraph 15.c. above shall be used for the division of all cash in the bank and all funds yet to be received from the Member Districts , the Alameda County Office of Education, or the State of California and the Federal Government. (With respect to cash and accounts receivable, see 20.b. for a description of: “Annual Operating Funds”; “Other Funds, Grants and Apportionments.”)

## 16. Withdrawal

- a. Any Member District may withdraw as a party to this Agreement. Withdrawal is effected as follows:
  - (1) June 30 (11:59 p.m.), annually, shall be the only day and month on which a withdrawal shall take effect.
  - (2) Notice of such withdrawal shall be in writing and addressed to Tri-Valley ROCP District, at its primary administrative office.
  - (3) Notice shall be received by the TVROCP no less than six (6) months prior to the effective date of such withdrawal.
- b. Allocation of Assets and Obligations to a withdrawing Member District
  - (1) All obligations between a withdrawing Member District and the TVROCP shall be discharged upon withdrawal.
    - (a) The Board shall have the right to purchase any or all of the withdrawing Member District’s pro rata share of the total tangible assets of the TVROCP, excepting permanent improvements made upon real property of the withdrawing Member District. The purchase price shall be an amount equal to the value which otherwise would be credited to the withdrawing district upon withdrawal.
    - (b) Personal property and/or funds equal to the withdrawing Member District’s pro rata share of the total tangible assets of the TVROCP, minus that withdrawing Member District’s pro rata share of obligations.
    - (c) Discharge shall be completed no later than one (1) year following the effective date of withdrawal.

- (2) Upon withdrawal by a Member District having TVROCP permanent buildings or real property within its territory:
  - (a) such assets shall be first credited towards that Member District's pro rata share of assets and transferred to the withdrawing district subject to any right to use of said assets that TVROCP may have by reason of an Agreement entered into with the withdrawing district.
  - (b) Should the value of said asset exceed the withdrawing district's pro rata share of assets, then the withdrawing district shall pay the excess to the TVROCP upon withdrawal.

c. Should a dispute arise from a Member District regarding **withdrawal**:

- (1) A member District may submit a written statement of a difference of interpretation of a dispute ("Statement") to the other Member Districts. At the next regularly scheduled meeting of the Board, the Board shall appoint four (4) individuals, one (1) from each Member District, who shall be charged with effecting a mutually satisfactory solution.
- (2) If no solution is reached within thirty (30) days of the creation of the panel, the Member District filing the Statement may file, with the remaining Member Districts, a written request for mediation. The Member Districts shall make good faith efforts to agree upon a mediator. If the Member Districts are unable to agree upon a mediator within ten (10) days of the written request for mediation, the Member District who filed the Statement shall request a list of five (5) mediators from the State Mediation and Conciliation service. Within three (3) days of receiving the list of mediators, the Member District who filed the Statement shall circulate the list to the remaining Member Districts. Within five (5) days of service of the list, each Member District shall strike three mediators and rank the remaining two in order of preference. The mediator preferred by the most Member Districts shall be used. The mediator shall either effect a satisfactory solution or issue an advisory statement of solution. The costs of the mediator shall be divided between the Member District who filed the Statement, and the TVROCP. Each Member District shall bear all of its own respective remaining costs, including but not limited to any attorney's fees or investigative costs incurred as a result thereof.
- (3) If mediation does not resolve the dispute, the Member District who filed the Statement may proceed to binding arbitration pursuant to the rules of the American Arbitration Association (AAA) governing contractual disputes. Any and all prevailing parties shall be entitled to recover attorney fees and costs incurred as a result of the arbitration.

## **17. Dissolution**

- a. This Agreement may be terminated, in its entirety, upon a majority vote of the Member Districts.
- b. Allocation of Assets and Obligations
  - (1) No assets may be divided or returned until all outstanding debts, liabilities and obligations have been resolved or a paid-up contract has been adopted which will remove further obligations on the TVROCP.
  - (2) Such contract may be for the Member District(s) to accept responsibility for any outstanding claims.
  - (3) Disposition of the remaining assets will then be made in accordance with the pro rata allocation set forth in paragraph 15.c.

## **18. Amendment**

- a. This Agreement may be amended by resolution.
- b. The amendment or amended agreement shall be effective when the required resolution has been approved by the governing bodies of a majority of the Member Districts.
- c. Provided, however, no amendment that is approved by less than unanimous vote of the Member Districts shall be effective until any nonconsenting Member District(s) has had an opportunity to withdraw from the TVROCP (*see* paragraph 16.a. above).

## **19. Dispute and Conflict Resolution**

- a. Should a dispute arise from a Member District regarding the TVROCP Joint Exercise of Powers Agreement, procedures, interpretation of, operations, changes, or policy, the TVROCP Superintendent shall attempt to resolve the matter with the Superintendent of said Member District. If a resolution is not reached with the TVROCP Superintendent and the Superintendent of said Member District, the dispute may be forwarded by the Member District raising the matter to all of the other Member District Superintendents. The decision of the Member District Superintendents shall be final, unless a written appeal is forwarded by the Member District raising the matter within ten (10) working days to the TVROCP Board. The TVROCP Board decision will be the final level of appeal except in the areas of funding, and/or withdrawal. [With respect to Dispute and Conflict Resolution regarding withdrawal, see 16.c.]

**20. Miscellaneous Provisions**

a. TVROCP Superintendent:

- (1) The Board shall appoint, and fix and pay the compensation of, the TVROCP Superintendent. Superintendent shall be an *ex officio*, non-voting member of the Board.
- (2) To the extent delegated by the Board, the TVROCP Superintendent shall implement the policy and decisions of the Board.

b. Funds and Apportionments:

(1) Annual Operating Funds

(a) Annual Operating Funds for ROCP shall be received in accordance with Education Code section 52321 (or, should that section be modified, superceded, suspended or repealed, in accordance with the subsequent controlling section).

(b) Annual Operating Funds for the Adults in Correctional Program shall be received pursuant to the contract(s) for those services.

(2) Other Funds, Grants and Apportionments

(a) All TVROCP funding (including but not limited to grant and contract funding) that is either distributed directly to, or received directly by, the TVROCP is the property of the JPA and is not the property of the individual Member Districts.

(b) "Other Funds, Grants and Apportionments" includes, dollars generated by and/or for TVROCP.

(3) Withholding Funds

If a Member District is considering withholding ROCP funds, said Member District shall notify the TVROCP Superintendent who shall convene a meeting of all of the Member District Superintendents to identify the impact of that action and to develop a recommendation to the TVROCP Board on what action to take.

c. Employees: All TVROCP services shall be provided by employees of TVROCP and not by employees of the Member Districts. This provision shall not preclude a Member District from providing parallel services (*e.g.* Career Center Support) from independent funding sources.

- d. Treasurer and Auditor-Controller: The Treasurer and Auditor-Controller of the TVROCP shall be the Treasurer and Auditor-Controller, respectively, of the Alameda County Superintendent of Schools.
- e. Expenditures:
- (1) All expenditures of funds shall be authorized either by the Board or in a Board policy that authorizes discretionary spending limits of the TVROCP Superintendent.
  - (2) Funds apportioned for ROCP (TVROCP) must be expended on programs and services offered by the TVROCP.
- f. Insurance.
- (1) The TVROCP shall acquire and maintain either a comprehensive liability policy or evidence of self-insurance which shall include general liability, acts or omissions arising out of negligence, bodily injury, automobile liability, and property damage. This policy shall name the TVROCP and its employees, agents, and officers as the insured.
  - (2) The TVROCP shall acquire and maintain a workers' compensation insurance and employer's liability policy, or evidence of a certification of permission to self-insure issued by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California.
- g. 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 otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions shall not be affected thereby.

**IN WITNESS WHEREOF**, the governing body of each of the Member Districts identified in Section 2, above, has approved this Third Amended Agreement by filing with the TVROCP Board an executed, certified copy of its adopted authorizing resolution.

**FOR THE DUBLIN UNIFIED SCHOOL DISTRICT**

By:

Date:

**FOR THE LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT**

By:

Date:

**FOR THE PLEASANTON UNIFIED SCHOOL DISTRICT**

By:

Date:

**FOR THE SUNOL GLEN UNIFIED SCHOOL DISTRICT**

By:

Date:

Adopted: 6-92  
Amended: 12-03  
Amended: 5-05  
Amended: 12-10-09