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| Introduction Date | 6-29-11 |
| Enactment Number | 11-1339 |
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Memo

To Board of Education

From Vernon Hal, Deputy Superintendent Business and Operations

Board Meeting Date June 29, 2011

Subject Proposed Amendment to East Bay Regional Occupational Agency Joint Exercise Powers Agreement

Action Requested Approval of amendment to East Bay Regional Occupational Agency Joint Exercise of Powers Agreement

Background In December 2008, the District and Alameda Unified School District entered into a Joint Exercise of Powers Agreement to create the East Bay Regional Occupational Agency ("Agency") to establish, operate, and maintain regional occupational programs. The Agreement provides that any amendment must be approved by the Agency, and Oakland and Alameda Unified School Districts.

Subsequently, the February 2009 Budget Act SBX34 rendered ROP funds "flexible" and entitled school districts participating in Joint Powers Agreements to redirect Regional Occupational Program (ROP) funds for any educational purpose. By mutual agreement, Oakland and Alameda Unified School Districts have elected to exercise their right to flex ROP funds for the 2011-12 school year and to each manage and administer those funds internally, within each respective district.

Discussion This proposed amendment to the Joint Exercise of Powers Agreement reflects the Participating Districts' desire to flex their funds and suspends the programmatic goals and duties of the Agency, rendering it inactive. The agreement must be amended to provide for this new status and to delineate the terms under which the inactive status will be maintained. The Agency will continue to exist and will comply with the statutory requirements for Joint Power Agreements in the event there is subsequent legislative change relating to ROP funds.

Fiscal Impact Each participating district will retain and manage the ROP allocation awarded to it by CDE based on 2007-08 revenue limit allocations.



The fund balance will remain within the control of the East Bay ROP Governing Board, and from it, the pared-down operating expenses will be drawn to cover the annual audit, minimal liability insurance, administrative fee and fiscal agent fee.

Attachments

- East Bay Regional Occupational Agency Amendment to Joint Exercise of Powers Agreement for a Regional Occupational Program
- East Bay Regional Occupational Agency Joint Exercise of Powers Agreement for a Regional Occupational Program

**EAST BAY REGIONAL OCCUPATIONAL AGENCY
AMENDMENT TO
JOINT EXERCISE OF POWERS AGREEMENT
FOR A REGIONAL OCCUPATIONAL PROGRAM**

Pursuant to Article XXI of the East Bay Regional Occupational Agency hereby **JOINT EXERCISE OF POWERS AGREEMENT** (dated December 18, 2008) ("Agreement"), Oakland Unified School District and Alameda Unified School District (the "Participating Districts") hereby amend the Agreement as set forth below.

RECITALS

WHEREAS, the Participating Districts entered into a Joint Exercise of Powers Agreement to create the East Bay Regional Occupational Agency to establish, operate, and maintain regional occupational programs under the California Education Code (Section 52300 *et seq.*);

WHEREAS, the Legislature of the State of California enacted SBX34, Chapter 12, Statute of 2009 and Education Code section 42605 which permitted school districts to utilize funding received from the state budget act of February 2009 for "Tier 3" categorical programs for any educational purpose;

WHEREAS, the Participating Districts wish to fully exercise the rights provided by SBX34 and Education Code section 42605 without dissolving the East Bay Regional Occupational Agency;

WHEREAS, the Participating Districts wish to minimize the costs associated with maintaining the East Bay Regional Occupational Agency during the period in which the Participating Districts exercise their rights under SBX3 4 and Education Code section 42605;

NOW, THEREFORE, in consideration of the above and of the mutual promises herein contained, each of Participating Districts does hereby agree to amend the Agreement as follows:

The Participating Districts add the following Articles to the original Agreement:

ARTICLE XXX

Until otherwise agreed to by the Participating Districts, the Participating Districts and the Governing Board of the East Bay Regional Occupational Agency agree that the East Bay Regional Occupational Agency will be in inactive status. The East Bay Regional Occupational Agency will continue to have all powers provided to it by law. The East Bay Regional Occupational Agency will

still comply with its statutory and legal obligations, including without limitation, those set forth in the California Education Code and the California Government Code. All provisions of the original Agreement remain in full force and effect, except for the following amendments:

Article V, Paragraph E – Elections of new President and Vice President are suspended. The current President and Vice President will continue to hold office until further amendment of the Agreement. The Treasurer and Auditor-Controller of the East Bay ROP shall be the Treasurer and Auditor-Controller, respectively, of the County Superintendent. An executed copy of this Agreement shall be furnished to said officials. They will perform the duties specified in Government Code Sections 6505 and 6505.5 and all other duties required by law and this Agreement. The Governing Board may elect other officers as it may deem necessary or appropriate.

Article VI, Meetings – The Governing Board shall meet at its discretion. The hour, time and place for each regular meeting shall be fixed annually at the first Governing Board meeting of each calendar year by a motion of the Governing Board. The Governing Board shall meet at a mutually agreed upon location as agreed upon by a majority of the Governing Board. The Governing Board may also hold special meetings at its discretion.

All meetings of the Governing Board shall be called, held and conducted in accordance with the terms and provisions of Title 5, Division 2, Part 1, Chapter 9 (commencing with Sections 54950 et seq.) of the State Government Code (the "**Ralph M. Brown Act**"), as the same may be modified by subsequent legislation and augmented by further rules of the Governing Board. Posting of meetings shall also comply with the Ralph M. Brown Act.

Except as otherwise provided or permitted by law, all meetings of the Governing Board shall be open and public. The Governing Board shall keep minutes of its meetings, as required by law, and shall promptly transmit to the governing board of each Participating District true and correct copies of meeting minutes.

Article VII, Goals, Powers and Duties

Paragraph A – This provision is suspended until further amendment to the Agreement.

Paragraph C -- This provision is suspended until further amendment to the Agreement.

Paragraph D -- This provision is suspended until further amendment to the Agreement.

Paragraph F -- This provision is suspended until further amendment to the Agreement.

Paragraph G -- This provision is suspended until further amendment to the Agreement.

Paragraph H -- This provision is suspended until further amendment to the Agreement.

Article VIII East Bay ROP Chief Executive Officer and Administrator --

Paragraph A -- This provision is suspended until further amendment to the Agreement.

Paragraph B -- This provision is amended as follows: The East Bay Regional Occupational Agency and the Participating Districts will designate an administrator of a Participating District to carry-out the administrative duties necessary to effectuate this Agreement, including without limitation, hiring a certified public accountant to audit the accounts and records of the East Bay Regional Occupational Agency, posting of meetings in compliance with the Brown Act, approving demands for warrants of the Agency that are consistent with this agreement. The Agency shall reimburse the Participating District \$10,000 (ten thousand) per year for the services of the contracted administrator. The administrator shall be an employee of the Participating District and no employment agreement is created between the Agency and the employee.

In addition, the East Bay Regional Occupational Agency and the Participating Districts will designate a finance professional of a Participating District to act as fiscal agent of the Agency, including without limitation to prepare and transmit the budget of the Agency, receive and record funds and fund expenditures, and effectuate appropriate reimbursements to Participating District. The Agency shall reimburse the Participating District \$10,000 (ten thousand) per year for the services of the contracted finance professional. The finance professional shall be an employee of the Participating District and no employment agreement is created between the Agency and the employee.

Article X Employees --

Paragraph D -- This provision is suspended until further amendment to the Agreement.

Paragraph E -- This provision is suspended until further amendment to the Agreement.

Article XIII Contributions and Advances

Paragraph D -- This provision is suspended until further amendment to the Agreement.

Article IX Coordinating Council

Paragraph A -- This provision is suspended until further amendment to the Agreement.

Paragraph B -- This provision is suspended until further amendment to the Agreement.

Article XVI Operating Funds

Paragraph A -- This provision is suspended until further amendment to the Agreement.

Paragraph B -- This provision is suspended until further amendment to the Agreement.

Article XIX Liability, Indemnity and Insurance

Paragraph D -- This provision is amended as follows: The Agency shall, at its own expense, carry sufficient insurance to insure against liabilities, errors and omissions arising out of its performance and to provide for its obligations under Sections A and B above. Insurance policies of the Agency shall name Participating Districts, their employees, trustees, and agents as additional insureds. The Agency shall provide a certificate of insurance, including an endorsement that names all of the Participating Districts as additional insureds, to each Participating District, upon execution of this Agreement and upon request of any of the Participating Districts during the term of this Agreement, evidencing this coverage in a form satisfactory to the Participating Districts. Liability insurance shall continue throughout the term of this Agreement.

IN WITNESS THEREOF, the Participating Districts and the East Bay Regional Occupational Agency agree to the foregoing amendment to the Agreement and have caused this Amended Agreement to be executed by their authorized officers as set forth below.

ALAMEDA UNIFIED SCHOOL DISTRICT

By-----
President of its Board of Education

OAKLAND UNIFIED SCHOOL DISTRICT

File ID Number: 11-1699
Introduction Date: 6-29-11
Enactment Number: 11-1339
Enactment Date: 6-29-11
By: ES

By ES D. Ye

President of its Board of Education
Edgar Rakestraw, Jr.
Edgar Rakestraw, Jr., Secretary
Board of Education

**EAST BAY REGIONAL OCCUPATIONAL
AGENCY**

By-----
President of its Governing Board

Approved this ____ of ____, 2011

Superintendent of Schools of Alameda County

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE
By [Signature]
Attorney at Law



Oakland Unified School District
Board of Education
Office of the State Administrator

December 17th, 2008

Legislative File
File ID No. 08-2546
Introduction Date 10/08/08
Enactment No. 69-1187
Enactment Date 12/17/08
By [Signature]

To: Board of Education
Vincent Matthews, State Administrator

From: *[Signature]* Roberta Mayor, Ed.D., Interim Superintendent
Prepared by Brigide Marshall, Director of Adult & Career Education

Subject: Approval by the Board of Education of the East Bay Regional Occupational Program (ROP) Joint Powers Agreement (JPA)

ACTION REQUESTED:

Approval and support by the Board of Education for the East Bay Regional Occupational Program (ROP) Joint Powers Agreement (JPA)

BACKGROUND:

Regional Occupational Program (ROP) Joint Powers Agreements (JPA) are generally entered into by a number of different school districts for the purposes of receiving Career Technical Education (CTE) programming support. The ROP structure represents a cost effective way to pursue a regional approach to engagement of the local business community and focused CTE program development in response to regional economic and workforce development trends.

In such standard agreements, the ROP functions as a distinct and separate entity, employing its own superintendent, administrative and clerical support staff, while off-setting proportions of teacher FTEs from participating school districts. The ROP Governing Board is comprised of appointed representatives from the Boards of participating districts.

ROP funds flow from the state to each participating school district which then transfers funds to the ROP for the purpose of supporting ROP programming across all districts participating in the JPA. The transfer of funds to the regional body by each member school district ensures a regional focus in the use of these resources and allows an important economy of scale benefit to be derived in the development of Career Technical Education programs which often require significant capital investments for equipment and facilities.

Relevant Education Codes are excerpted below in order to provide the legislative context for the creation of Regional Occupational Programs:

Education Code 52300 ROCP Legislative Intent

In enacting this article, it is the intent of the Legislature to provide qualified students with the opportunity to attend a technical school or enroll in a career technical or technical training program, regardless of the geographical location of their residence in a county or region. The Legislature hereby declares that a regional occupational center will serve the state and national interests in providing career technical and technical education to prepare students for an increasingly technological society in which generalized training and skills are insufficient to prepare high school students and graduates, and out-of-school youth and adults for the many employment opportunities which require special or technical training and skills. The Legislature also declares that regional occupational centers will enable a broader curriculum in technical subjects to be offered, and will avoid unnecessary duplication of courses and expensive training equipment, and will provide a flexibility in operation which will facilitate rapid program adjustments and meeting changing training needs as they arise.

It is recognized by the Legislature that career technical programs may achieve great flexibility of planning, scope and operation by the conduct of these programs in a variety of physical facilities at various training locations. It is the further intent of the Legislature that regional occupational centers and programs provide career technical and occupational instruction related to the attainment of skills so that trainees are prepared for gainful employment in the area for which training was provided, or are upgraded so they have the higher level skills required because of new and changing technologies or so that they are prepared for enrollment in more advanced training programs.

Education Code 52301

(a) (1) The county superintendent of schools of each county, with the consent of the state board, may establish and maintain, or with one or more counties may establish and maintain, a regional occupational center, or regional occupational program, in the county to provide education and training in career technical courses. The governing boards of any school districts maintaining high schools in the county may, with the consent of the state board and of the county superintendent of schools, cooperate in the establishment and maintenance of a regional occupational center or program, except that if a school district also maintains 500 or more schools, its governing board may establish and maintain one or more regional occupational centers or programs, without those restrictions. A regional occupational center or program may be established by two or more school districts maintaining high schools through the use of the staff and facilities of a community college or community colleges serving the same geographic area as the school districts maintaining the high schools, with the consent of the state board and the county superintendent of schools.

(2) The establishment and maintenance of a regional occupational center or program, by two or more school districts may be undertaken pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code. In a regional occupational center or program, the functions of the county auditor undertaken pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code shall be performed by the county superintendent of schools in a county in which the board of supervisors has transferred educational functions from the county auditor to the county superintendent of schools pursuant to Sections 42649, as added by Chapter 533 of the Statutes of 1977, and 85265.5. If a school district or school districts establish and maintain a regional occupational center or program, pursuant to this chapter, the county superintendent of schools may, with the consent of the state board, establish and maintain a separate regional occupational center or centers or program or programs.

(b) Notwithstanding other provisions of this section, a single school district located in a class 1 county, as defined in Section 1205, and having an average daily attendance of 50,000 or more, or a single school district located in a class 2 county, as defined in Section 1205, and having an average daily attendance of 100,000 or more, may apply to the state board through the county superintendent of schools for permission to establish a regional occupational center or program. Except as provided in subdivision (c), the state board shall, within 90 days of receipt of an application, prescribe a procedure whereby the school district may establish a center or program in accordance with its application and in compliance with the provisions of the State Plan for Career Technical Education. The county superintendent of schools may supervise establishment of the center or program.

(c) (1) The state board may disapprove a waiver application submitted by a single school district pursuant to Article 3 (commencing with Section 33050) of Chapter 1 of Part 20 for permission to establish a regional occupational center or program which does not meet the requirements of this section if the state board determines that the establishment of the center or program would have an adverse effect upon existing regional occupational centers or programs located in school districts which are contiguous to the applicant school district.

(2) The state board shall establish criteria to measure adverse effect. The criteria shall include, but not be limited to, hardship on (A) school districts operating regional occupational centers or programs which are contiguous to the applicant school district and (B) students of school districts operating regional occupational centers or programs that are contiguous to the applicant school district.

(d) Notwithstanding any other provision of law, any regional occupational center or program operated by a single school district under Section 33050 shall be granted permanent status if the single school district has previously been granted two waivers from the state board to operate a single school district regional occupational center or program and the single school district maintains at least three but not more than five comprehensive high schools within the school district. The revenue limit for a regional occupational center or program established under this subdivision shall be the lower of either: (1) the revenue limit under which the center or program operates as of January 1, 1985, or (2) the revenue limit of the school district as of January 1, 1985, except that this revenue limit shall be subject to annual percentage cost-of-living adjustments provided for regional occupational centers and programs. The governing board of the school district shall retain authority to decide whether or not to operate the regional occupational center or program under this subdivision.

DISCUSSION:

During the technical review process of the current Oakland-Alameda ROP conducted by Alameda County Office of Education, the structure of the ROP has been found not to comply with the intent of the Education Code. The participating school districts have been directed by ACOE to address this structural issue. The Oakland-Alameda ROP is comprised solely of parallel programs operated by the Oakland Unified School District (OUSD) and the Alameda Unified School District (AUSD); there is no separate and autonomous ROP entity administering funding and programs. Funds flow from the state to each of the respective districts, and decisions related to their expenditures as well as staffing for programs stay within each district. There is no regional focus, activity or engagement, no economy of scale benefit or coordinated development of CTE programming. At present, AUSD and OUSD ROP staff members meet periodically for the purpose of combining their fiscal reports and then present the resultant summary budget to the Alameda County Office (ACOE) of Education. The ACOE has repeatedly noted that this mode of operation is not compliant and that a true and valid ROP JPA must be established without delay.

OUSD and AUSD have worked collaboratively to develop a plan for a new and fully compliant ROP configuration, as well as planning for transition to the new model, subject to the approval of the Boards of Education of the currently participating school districts.

1. An important initial implementation step is the presentation of a request to the respective Boards of Education to join the new East Bay ROP JPA. Upon the agreement and resolutions of the participating school districts of the new East Bay ROP, the old, non-compliant Oakland-Alameda ROP is simultaneously dissolved. (The Alameda Unified School District Board of Education voted to approve the East Bay ROP JPA on November 11th 2008).
2. Once the new, appropriately structured and compliant ROP JPA exists as a distinct and legal entity, it will be able to hire its own Superintendent who will then oversee the remaining steps in the reconfiguration process. The reconfiguration process, including transition of staffing and operational functions, will take place during the 08-09 school year, with the new East Bay ROP positioned for full implementation on July 1st 2009.
The two flow charts attached describe graphically the current, non-compliant organizational structure of the Oakland-Alameda ROP, and the proposed, compliant organizational structure of the new East Bay ROP.
3. The East Bay ROP JPA stipulates the creation of a Coordinating Council for the purpose of advising the ROP Superintendent when deemed necessary and as required by the Governing Board. The Coordinating Council shall consist of the superintendent of each Participating District or his or her designee and two additional staff designees from each Participating District for a total of three Coordinating Council members per Participating District. Other staff members of each Participating District, as appropriate, may also attend meetings or participate in Coordinating Council activities.

RECOMMENDATION:

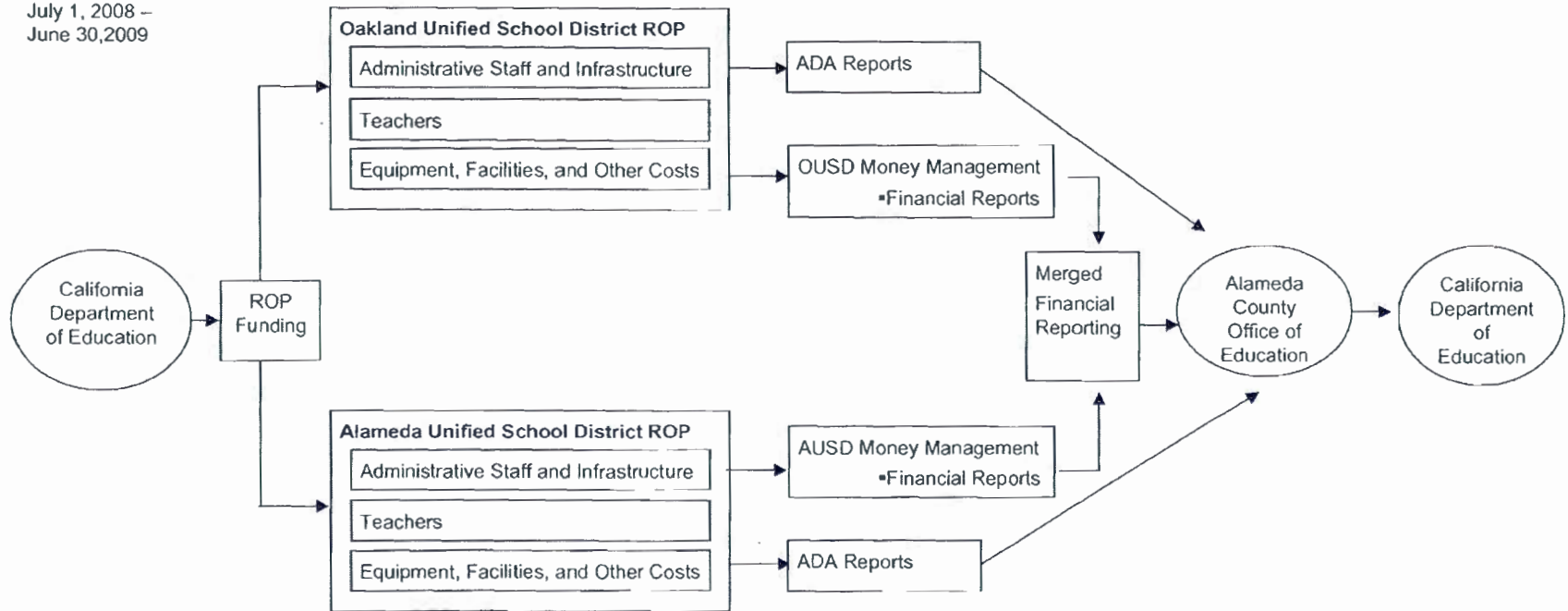
Approval and support by the Board of Education of the East Bay Regional Occupational Program (ROP) Joint Powers Agreement (JPA)

FISCAL IMPACT:

In 2007-08, OUSD generated 556 units of ROP ADA. The ROP Revenue limit in 07-08 was \$3562.00. Failure to address the non-compliant structure of the current Oakland-Alameda ROP could have serious negative fiscal consequences for OUSD with the potential loss of almost \$2m annually in ROP Career Technical Education Program funding.

Existing OUSD-AUSD ROP Relationships

PHASE 1
July 1, 2008 –
June 30, 2009



Overview of Existing Structure

- Establish the East Bay ROP as a separate legal entity (estimated: December 2008)
- Recruit the new Superintendent (projected start: February 2009)
- Set up administrative infrastructure (salary scales, benefits, office, technology, procedures, etc.)
- Distribute monies to ROP sections (administrative positions do not change)

Planning and Priority Setting

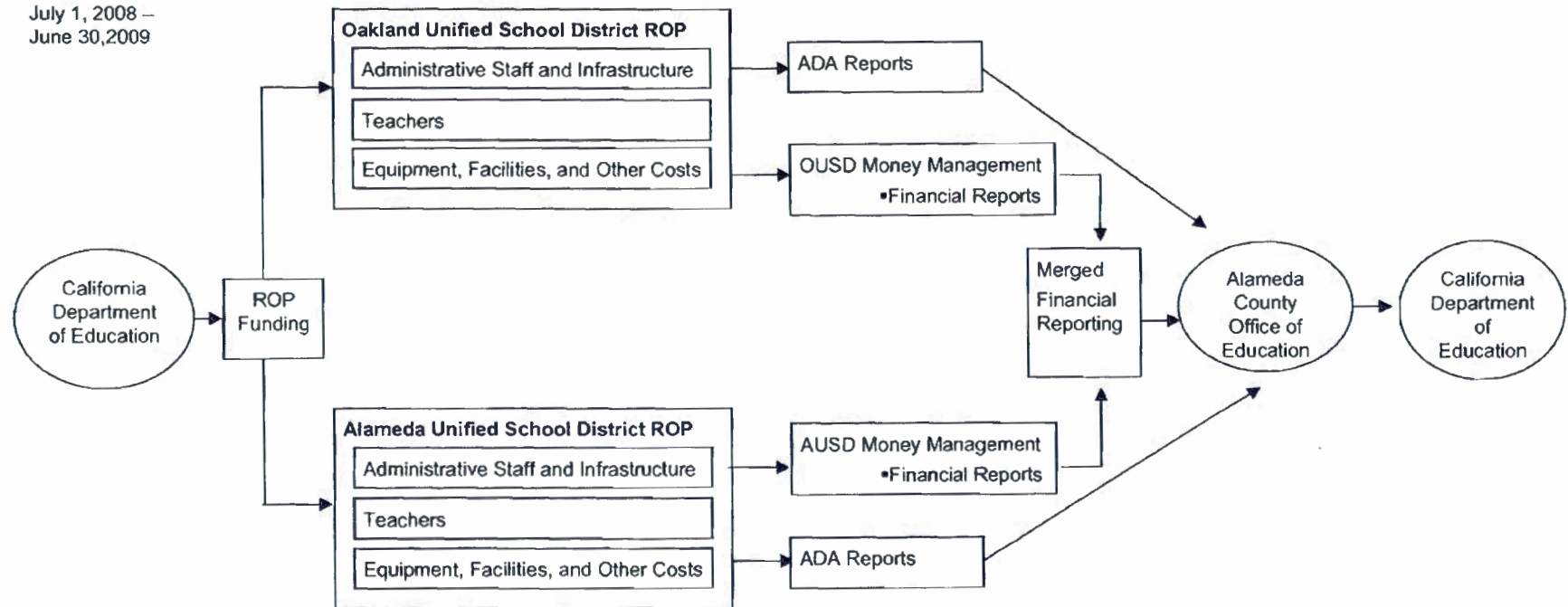
- Each district conducts independent curriculum and planning

Staffing and Infrastructure

- Two separate administrative structures
- Separate offices and business services

Existing OUSD-AUSD ROP Relationships

PHASE 1
July 1, 2008 –
June 30, 2009



Overview of Existing Structure

- Establish the East Bay ROP as a separate legal entity (estimated: December 2008)
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Planning and Priority Setting

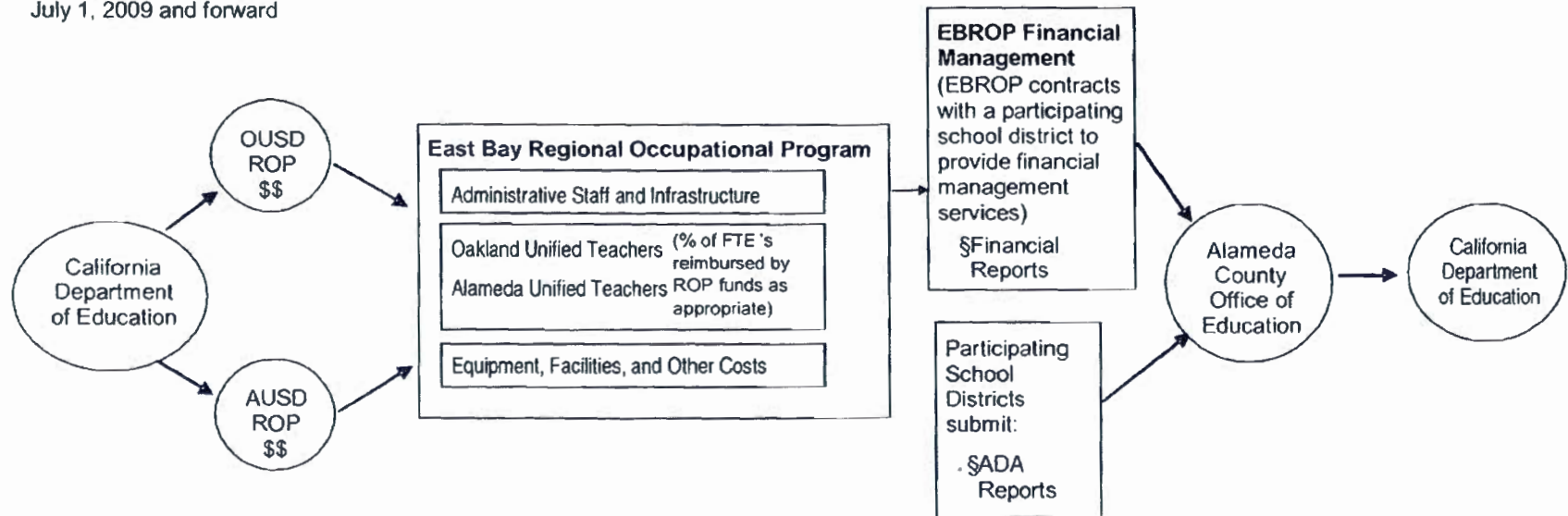
- Each district conducts independent curriculum and planning

Staffing and Infrastructure

- Two separate administrative structures
- Separate offices and business services

Future EBROP Relationships

PHASE 2
July 1, 2009 and forward



Overview of Future Structure

- East Bay ROP becomes fully operational July 1, 2009
- OUSD and AUSD ROP sections funded within new structure

Planning and Priority Setting

- First cycle of collaborative program planning

Staffing and Infrastructure

- One administrative structure
- One office and business services

**ARTICLE VII
GOALS, POWERS AND DUTIES**

Pursuant to and to the extent required by State Government Code Section 6509, the Agency shall be restricted in the exercise of its powers in the same manner as the Participating Districts are restricted in their exercise of similar powers. Without limiting or expanding the foregoing, the Agency, as administered by the Governing Board, shall have the following powers and duties and shall adhere to the goals listed herein to the extent possible:

A. The Governing Board's goals shall be such as to provide for planning, establishing and maintaining Regional Occupational Programs provided for in this Agreement, and the Governing Board shall determine the policies in respect thereto. Without limiting the foregoing, the Governing Board shall, pursuant to and in compliance with the ROP Act:

1. Provide East Bay ROP students with individual counseling and guidance in career technical education matters.
2. Provide a curriculum which includes skills training in occupational fields having current and future needs for such training.
3. Provide an opportunity for East Bay ROP students to acquire entry-level vocational skills that may lead to a combination work-study schedule.
4. Provide for the upgrading of the vocational skills of students and for retraining where necessary.
5. Maintain a pupil-teacher ratio which shall enable students to achieve optimum benefits from the instructional program while ensuring the East Bay ROP is fiscally neutral and operationally feasible.

B. Pursuant to Government Code Section 6508, the Governing Board shall annually adopt a budget in accordance with Education Code Sections 42103 and 42127 showing sources of revenue and each of the purposes for which the East Bay ROP shall need money and the estimated amount of money that shall be needed for each purpose for the Fiscal Year. Copies of the budget shall be transmitted to each of the Participating District's Superintendents for informational purposes and to the County Superintendent for action in accordance with section 42127 of the Education Code.

C. The Governing Board may provide day (including Saturday) and evening, full-time and part-time vocational education programs for minors and adults throughout the calendar year. It shall be the goal of the East Bay ROP to offer as many career technical education opportunities to students as possible, whether that be during the academic school year/day or occurring after the normal school day and during weekends and summer months when typical schools may not be operating.

D. The Governing Board may develop proposals for growth and expansion of Regional Occupational Programs. It is the express goal of the Agency to develop, enhance, improve and increase career technical education offerings served in the Participating Districts, with the caveat that a maintenance of effort be continued in the career technical education courses currently offered by the Participating Districts. Maintenance of effort relates only to the number of sections offered and does not apply to administrative operations and staffing.

E. The Governing Board shall have the power to acquire a site or sites for the East Bay ROP within each Participating District's geographical areas; the power to plan, construct, purchase or lease buildings therefore; and the power to purchase or lease furniture, equipment, fixtures and other personal property therefore. The purchase, lease or construction of sites as contemplated by this paragraph shall be undertaken only after the governing board of each Participating District has passed a resolution approving such purchase, lease or construction of such sites. The leasing of buildings or equipment shall comply with Education Code Section 52308.

F. The Governing Board shall determine which programs shall be provided by the East Bay ROP, as guided and presented by the ROP Superintendent.

G. The Governing Board may delegate to the ROP Superintendent responsibilities and duties that it determines necessary for the administration, coordination and supervision of the East Bay ROP maintained hereunder.

H. The Governing Board may, while performing the functions as spelled out in Paragraph A through G above, seek the advice of the ROP Superintendent and (when deemed necessary) the Coordinating Council.

I. The Governing Board shall fiscally review each of the East Bay ROP programs annually. In the event that the East Bay ROP fails to generate State funds to the extent necessary to meet its operating costs in any given school year, the Governing Board shall ascertain the exact amount of the deficit and shall act immediately to determine a means to offset the deficit.

J. The Governing Board shall have the power to contract with any Participating District or the County Superintendent for fiscal accounting services, payroll, credentials, reports, records, program evaluation and other functions until such time as the Agency may fulfill those functions independently.

K. The Governing Board shall have the power to contract for specialized services of fiscal, legal, engineering, economic, administrative and other services.

L. The Governing Board shall have the power to appoint and employ both classified and certificated employees; to determine the number of positions; to fix and pay the compensations of these employees; to establish personnel policies, procedures, salary schedules, benefits and other matters related to the Agency's employees.

M. The Governing Board shall have the power to establish all other related policies to ensure that the East Bay ROP can function in matters of educational and business necessity.

N. The Governing Board shall have the power to initiate or defend legal actions on behalf of the Agency.

O. Fiscal Duties and Responsibilities.

1. The Governing Board shall have the power and authority to receive, accept, expend, or disburse funds by contract or otherwise for purposes consistent with the provisions of this Agreement and shall maintain at all times a complete and accurate system of accounting for said funds. All expenditures of funds shall be authorized directly by the Governing Board or in accordance with Governing Board policies established to authorize discretionary spending limits of the ROP Superintendent. Pursuant to Government Code Section 6505, there shall be strict accountability of funds generated or transacted under this Agreement. A report of receipts and expenditures shall be made by the Governing Board to the Participating Districts within 90 days of the close of each Fiscal Year.

2. The Governing Board may contract with any Participating District, the County Superintendent or any other public entity to prepare and maintain records, as directed, including financial reports and program evaluation reports for the State and the County Superintendent and provide for expeditious communication with the State Department of Education and its agencies and also with each Participating District.

3. The East Bay ROP shall reimburse Participating Districts for all contracted personnel expenses without the addition of any indirect fee(s).

4. Should the East Bay ROP fail to generate the budgeted revenue to the extent necessary to meet the operating costs in any given school year, the Governing Board shall ascertain the exact amount of the deficit and shall act immediately to determine a means to offset the deficit. The Coordinating Council shall provide the Governing Board with recommendations prior to the Governing Board taking action. It is the intent of the Participating Districts that the Agency and the East Bay ROP be solely liable for any and all deficits. The Agency shall not charge back to the Participating Districts or transfer any liability or deficit to any of the Participating Districts.

P. The Governing Board shall establish and maintain an employer advisory board or boards pursuant to and in accordance with Education Code Section 52302.2

Q. Grants

1. The Governing Board shall have the power to accept and expend grants from the Federal Government, the State or any other public or private sources for the purposes of this Agreement.

2. The governing board of each of the Participating Districts may also solicit, accept and expend grants from the Federal Government, the State or from other public or private sources for the purposes of this Agreement.

**ARTICLE VIII
EAST BAY ROP CHIEF EXECUTIVE OFFICER AND ADMINISTRATOR**

A. To the extent they are delegated as mentioned above, the policy and decisions of the Governing Board shall be implemented and executed by the East Bay ROP Chief Executive Officer ("**ROP Superintendent**"). The Board shall appoint as well as fix and pay the compensation of the ROP Superintendent, who shall not be a voting member of the Agency's Governing Board. Pursuant to Government Code Section 6505.1, the ROP Superintendent is hereby designated as the person who has charge of all property of the East Bay ROP. The ROP Superintendent is responsible for managing, coordinating and administering the Agency's delivery of career technical education programs serving Participating Districts. The ROP Superintendent shall work cooperatively with the staff of Participating Districts and district offices in providing a Regional Occupational Program that will best respond to the career technical education needs of the Participating Districts.

The specific duties of the ROP Superintendent shall be identified in the job description of the ROP Superintendent to be kept on file in the Agency's Personnel Department. Whenever an opening exists for the ROP Superintendent, the Governing Board shall select the ROP Superintendent. The ROP Superintendent shall be evaluated in writing annually by the Governing Board. Prior to discussing the performance of the ROP Superintendent, each Representative shall meet with the superintendent of such Participating District to receive input regarding the ROP Superintendent's performance. Input received from each Participating District's superintendent shall be shared with the ROP Superintendent by each Representative of the Governing Board.

B. The Governing Board shall appoint an administrator of the East Bay ROP (the "**East Bay ROP Administrator**"). The specific duties of the East Bay ROP Administrator position shall be identified in the job description of said position to be kept on file in the Agency's Personnel Department. The East Bay ROP Administrator shall serve as ex-officio member and secretary to the Governing Board.

**ARTICLE IX
COORDINATING COUNCIL**

A. A Coordinating Council shall be established for the purpose of advising the ROP Superintendent when deemed necessary and as required by the Governing Board. The Coordinating Council shall consist of the superintendent of each Participating District or his or her designee and two additional staff designees from each Participating District for a total of three Coordinating Council members per Participating District. Other staff members of each Participating District, as appropriate, may attend meetings or participate in Coordinating Council activities.

B. Coordinating Council members are not entitled to compensation. The Governing Board may authorize reimbursement of expenses incurred by Representatives, or their alternates.

**ARTICLE X
EMPLOYEES**

A. The Governing Board may appoint and employ employees to operate, maintain, conduct, and teach East Bay ROP classes maintained within the territorial boundaries of each Participating District. Certificated employees of the East Bay ROP shall be employed pursuant to Education Code Section 44830 and 44831. Classified employees of the East Bay ROP shall be employed pursuant to Education Code section 45100 et seq. The Governing Board shall fix and pay the compensation of employees.

B. Classified and certificated personnel, employed by the Governing Board after the date of this Agreement, whether teaching ROP courses full-time, part-time, or hourly shall be employees of the Agency, and not of the Participating Districts, and shall be subject to the personnel policies, procedures, salary schedules, benefits and other regulations of the East Bay ROP.

All East Bay ROP employees hired after January 1, 2009 shall be employees of the East Bay ROP unless other arrangements are mutually agreed to by the Governing Board, the employee and the appropriate Participating District. Such arrangements shall be on a year-to-year basis with no obligation on the part of any party to continue the arrangement for subsequent years.

C. Subject to the approval of the Governing Board, instructors currently employed by Participating Districts on the effective date of this Agreement may provide instruction at any location in the East Bay ROP attendance area. Such salary expenses incurred shall be reimbursed from funds of the East Bay ROP. Instructors employed by Participating Districts who provide such instruction with the approval of the Governing Board shall not be deemed employees of the East Bay ROP.

D. Certificated and classified staff of a Participating District annually contracted to the East Bay ROP will be evaluated annually for possible continuation in their positions if such contracting of positions is to be continued and evaluations are satisfactory and their classes and services continue to be offered by the East Bay ROP.

The East Bay ROP shall pay contracted employees according to the salary schedule of the Participating District by which they are employed.

E. Should occupational projections, student enrollment, or budget reductions require a reduction in instruction or services for the subsequent school year, the Governing Board shall notify the affected Participating District of the reduction in programs or services by January 15th of the current school year.

ARTICLE XI LOCATION AND ADMISSION OF STUDENTS

A. Each Regional Occupation Program of the East Bay ROP shall be established at a readily accessible place selected to serve pupils who shall attend that program. Each Regional Occupation Program of the East Bay ROP shall be located in buildings at school sites or facilities in each of the Participating District as determined by the Governing Board or at other locations to be identified in the future.

B. Any person or pupil who resides in any of the Participating Districts, who can benefit from the instruction and who is otherwise eligible to attend a high school or adult school in any of the Participating Districts may receive East Bay ROP instruction outlined hereunder, whether maintained in the Participating District of residence or in other cooperating school districts.

After consultation with the Coordinating Council, the ROP Superintendent may determine priorities for student admissions. A pupil may be admitted on a full-time or part-time basis.

The ROP Superintendent may admit pupils residing in school districts other than the Participating District under interdistrict attendance agreements made with Participating District pursuant to Education Code Section 46600.

ARTICLE XII PURCHASING

A. Each Participating District may purchase, in its own name, real and personal property and fixtures to be used in the Regional Occupation Program established and conducted within its own boundaries. The contribution of each Participating District toward such purposes shall be provided as set forth in Article XIII of this Agreement.

B. At the direction of the Governing Board, a contracted entity may purchase supplies, materials and personal property on behalf of the Agency.

**ARTICLE XIII
CONTRIBUTIONS AND ADVANCES**

Each Participating District hereto may:

A. Make contributions from their respective treasuries for purposes set forth herein or furnish personnel, equipment and property in lieu of other contributions or advances.

B. Make payments to defray costs of such purposes.

C. Make advances for the purposes set forth herein; such advances are to be repaid hereafter as provided.

D. Participating Districts shall pay directly to the East Bay ROP on a monthly basis all funds collected for normal apportionments entitled to the East Bay ROP. All Participating Districts shall pay all other revenue (i.e., Lottery, Proposition 98, etc.) entitled to the East Bay ROP no later than thirty (30) days after their receipt. The contracted entity designated by the Governing Board to maintain financial records, prepare financial reports and discharge other financial duties as directed by the Governing Board, shall immediately deposit all revenues to East Bay ROP accounts.

E. The contracted entity shall reimburse the Participating District the direct cost incurred by each Participating District. Reimbursement shall be made within ten (10) days of receipt of the monthly apportionment from each Participating District. Each Participating District shall provide a monthly detailed invoice of all direct costs to the East Bay ROP Administrator. The contracted entity may not approve any invoice without the consent of the East Bay ROP Administrator and the ROP Superintendent.

**ARTICLE XIV
TERM AND WITHDRAWAL**

A. This Agreement shall become effective as of its date of execution by all Participating Districts and shall continue in full force and effect until June 30, 2012 unless rescinded or terminated before that date as further provided herein. This Agreement may be renewed at the option of the Participating Districts for an additional four year term.

B. Any Participating District may withdraw from this Agreement at the end of any fiscal year, provided that written notice of intention to withdraw has been served upon the Governing Board and other Participating Districts no later than one year prior to the date of withdrawal, and provided further that at such time, the withdrawing Participating District has either discharged or arranged to discharge all pending obligations under this Agreement. Notice of withdrawal must include written authorization from the governing board of the Participating District. If any party decides to withdraw, this Agreement shall remain in full force and effect between or amongst the remaining Participating Districts as further provided herein.

**ARTICLE XV
CONSTRUCTION BONDS**

With the unanimous approval of the Governing Board and the consent of the governing boards of each Participating District, an election may be called, held and conducted for the issuance of bonds for construction and other capital expenditures for establishing and maintaining a regional occupation center in accordance with Education Code 52319.

**ARTICLE XVI
OPERATING FUNDS**

A. The funding of the Agency shall be through the State-established Regional Occupation Program revenue limit. The Agency shall receive annual operating funds from each of the Participating Districts in an amount per unit of average daily attendance equal to the ROP revenue limit received by those Participating Districts for each unit of average daily attendance generated in the regional occupational center or program as provided in Education Code Section 52321 and excluding lottery funds. These funds will be transferred to the Agency in the most expedient manner, subject to approval by the Participating Districts and the County Office of Education. One-time funds or any other additional funds beyond the revenue limit that are identified for Regional Occupation Program shall be distributed directly to the Agency.

B. The East Bay ROP shall take full responsibility for all funding generated through partnership with an apprenticeship agency. The district acting as the Local Educational Agency shall be indemnified and held harmless for all liability arising from an error in the calculation of attendance or other potential loss of funds.

**ARTICLE XVII
APPROVAL AND CONSENT**

This Agreement is subject to the approval and consent of the County Superintendent and to the approval and consent of the State Board of Education.

**ARTICLE XVIII
DISPUTE RESOLUTION**

A. Should a dispute arise between the Participating Districts regarding the East Bay ROP's procedures, operations, changes, policy or property rights, the ROP Superintendent shall attempt to resolve the matter with the Participating Districts. If a resolution is not reached with the ROP Superintendent, the Participating District raising the matter may forward the dispute to the Coordinating Council for resolution. The recommendation of the Coordinating Council shall be forwarded to the Governing Board. The Governing Board's decision shall be final.

B. Should any question or disagreement from a Participating District arise regarding an interpretation of any part of this Agreement, the ROP Superintendent shall attempt to resolve the matter with the Participating District. If the ROP Superintendent

does not reach resolution, the Participating District raising the question or disagreement may forward the matter to the Coordinating Council for resolution. The recommendation of the Coordinating Council shall be forwarded to the Governing Board. The Governing Board's decision shall be final.

C. If there is a dispute between the Representatives on the Governing Board so as to cause a deadlock of decision-making, the ROP Superintendent shall attempt to resolve the matter with the Representatives within one (1) week from the date of the initial dispute. If they are unable to resolve the dispute, the Representatives shall submit the dispute to the Coordinating Council. The recommendation of the Coordinating Council shall be forwarded to the Governing Board. If, however, the Coordinating Council is deadlocked, the Governing Board shall submit the dispute to binding arbitration through a local arbitrator recognized by the American Arbitration Association. The fees and costs of the American Arbitration Association and the arbitrator shall be split equally among each Participating District; provided, however, that the attorneys' fees of the prevailing Participating District or Participating Districts shall be paid by the losing Participating District or Participating Districts.

ARTICLE XIX LIABILITY, INDEMNITY AND INSURANCE

A. Pursuant to State Government Code Section 6508.1, the debts, liabilities, and obligations of the Agency shall not be the debts, liabilities, and obligations of the Participating Districts; provided, however, that a Participating District may separately contract for or assume responsibility for specific debts, liabilities, or obligations of the Agency. Furthermore, the debts, obligations and liabilities of each Participating District shall not become the debts, liabilities and obligations of the other Participating Districts. If a Participating District is held liable upon any judgment for damages caused by a wrongful or negligent act or omission of said Participating District occurring in the performance of this Agreement, no other Participating District shall be liable on such judgment or be obliged to make any contribution or assessment towards such judgment.

B. Upon any liability arising out of the Agency's performance of its powers, duties, and responsibilities under this Agreement, the Agency shall indemnify the Participating Districts to the Agreement as provided by Government Code Section 895.4.

C. Funds of the Agency may be used to defend, indemnify, and hold harmless the Agency, any Participating District, any Representative of the Governing Board and any employee of the Agency for their actions taken within the scope of their duties while acting on behalf of the Agency.

D. The Agency shall, at its own expense, carry sufficient insurance to insure against liabilities, errors, and omissions arising out of its performance and to provide for its obligations under Sections A and B above. The Agency shall, at its own expense, obtain and maintain in force during the term of this Agreement the following insurance: (1) a policy of comprehensive single-limit general liability insurance insuring the Agency and the Participating Districts against claims and liabilities arising out of Agency's

performance of this Agreement, (2) a policy of automobile insurance covering any owned, non-owned, leased, or hired automotive equipment used by Agency or its employees in connection with Agency's performance of this Agreement, (3) a policy of public officials errors and omissions insurance, and (4) a policy of pollution liability insurance. The minimum coverage for all insurance shall be not less than [three million dollars (\$3,000,000)] Combined Single Limit and at least as broad as the Insurance Service Office (ISO) Forms (CG 00 01 and CA 00 01) for bodily injury, death and property damage as a result of any one occurrence and a [three million dollar (\$3,000,000)] general aggregate policy. That insurance shall name Participating Districts, their employees, trustees, and agents, as additional insureds. The Agency shall provide a certificate of insurance, including an endorsement that names all of the Participating Districts as additional insureds, to each Participating District, upon execution of this Agreement and upon request of any of the Participating Districts during the term of this Agreement, evidencing this coverage in a form satisfactory to the Participating Districts. Liability insurance shall continue throughout the term of this Agreement.

E. The Agency shall ensure that appropriate and adequate Workers' Compensation insurance covering all persons employed by the Agency or engaged in the performance of this Agreement is in effect at all times during the term of this Agreement, and shall comply with all provisions of law applicable to the Agency with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of this Agreement, or of any workers' compensation insurance policy, and upon the request of any of the Participating Districts, the Agency shall provide the Participating Districts, as evidence of this required coverage, a certificate of insurance in a form satisfactory to the Participating Districts, providing that coverage shall not be canceled or reduced without thirty (30) days prior written notice to the Participating Districts.

F. The Agency shall provide endorsements requiring each insurer to provide each of the Participating Districts thirty days prior written notice of cancellation, alteration or reduction in coverage. All insurance of the Agency shall be primary and any insurance policy or self-insurance procured by the Participating Districts shall be secondary. All Agency insurance policies shall contain a cross liability endorsement. The Participating Districts shall have the right to reassess and increase the policy limits for all insurance every three years. All SIRs or deductibles shall be disclosed to all Participating Districts. All insurance shall be with carriers approved by the Participating Districts. At least thirty (30) days prior to the expiration of each insurance certificate, and every subsequent certificate, the Agency shall deliver to the Participating Districts a new certificate of insurance consistent with all of the terms and conditions required in connection with the original certificate of insurance as described in this Article.

ARTICLE XX DISPOSITION OF PROPERTY AND FUNDS

A. In the event of the dissolution of the Agency, including the complete rescission or other final termination of this Agreement by all Participating Districts hereto,

any real or personal property shall be used to discharge all obligations of the Agency pursuant to Section 6511 of the State Government Code. For any property that remains following said discharge the East Bay ROP shall return to each Participating District that was a party to this Agreement a proportionate share of the contributions made to such properties by the Participating District or in the same proportionate share of any remaining obligations should they exist. Such disposition shall follow, to the extent possible, the provision set forth below for the withdrawing Participating District(s) (each a "**Withdrawing District**").

B. In the event that a Participating District withdraws from this Agreement, all obligations between the Withdrawing District and the East Bay ROP shall be discharged through a transfer to the Withdrawing District of real or personal property or funds equal to the Withdrawing District's pro rata share of the total tangible assets of the East Bay ROP no later than one year following the effective date of the withdrawal.

The East Bay ROP Governing Board shall have the right to purchase any or all of the Withdrawing District's pro rata share of the total tangible assets of the East Bay ROP, excepting permanent improvements made upon real property of the Withdrawing District, for an amount equal to the value which otherwise would be credited to the Withdrawing District upon withdrawal.

C. The total tangible assets of the East Bay ROP are permanent buildings, relocatable buildings, administrative and instructional equipment, cash in bank, advance ADA and monies earned but not received from the Participating Districts. The California School Accounting Manual shall be used to determine the category for particular assets. The pro rata determination of tangible assets, defined as permanent buildings, relocatable buildings, and administrative and instructional equipment and monies, shall be based on the percentage of total generated ADA of all Districts a party hereto from the date it became a Participating District in this organization until the last day of the fiscal year of participation by the Withdrawing District.

1. Permanent Structures. The value of any permanent development of buildings, the purchase and ownership of relocatable buildings or property or sites which have been made using East Bay ROP monies for said assets and shall include, but not be limited to, architect fees, plan fees, specification fees, etc., and upon withdrawal by a Participating District having such an asset within its territory, such asset shall be first credited toward that such Withdrawing District's pro rata share of assets. Upon such withdrawal by a Participating District, said assets shall be transferred to the Participating District subject to any right to use said asset East Bay ROP may have by reason of an agreement entered into with the Withdrawing District. Should the value of said asset exceed the Withdrawing District's pro rata share of assets, then the Withdrawing District shall pay such excess to the East Bay ROP upon withdrawal.

2. Equipment. The value of administrative and instructional equipment assets shall be the dollar value recorded, pursuant to State Education Code 35168, in the East Bay ROP inventory record book at the time of purchase or

investment less 10% of purchase price for each year after the date of purchase up to a maximum of nine (9) years. After nine (9) years, assets shall have a value of 10% of purchase price.

3. Non-permanent Buildings. The value of purchased relocatable building assets shall be the current fair-market value, but shall not exceed the original price including, but not limited to, architect fees, plan fees, specification fees, etc. The current fair-market value of relocatable buildings shall be determined by the Governing Board. If the Withdrawing District disagrees with the determination of the current fair-market value by the East Bay ROP Board, the current fair-market value of properties shall be determined by an independent appraiser. The appraiser shall be agreed upon by the Governing Board and the Withdrawing District or Withdrawing Districts. If the Withdrawing District or Withdrawing Districts cannot agree upon the selection of an appraiser with the remaining Governing Board, the Parties shall request the County Superintendent to select the appraiser. The Withdrawing District or Withdrawing Districts shall pay all costs incurred in connection with the appraisal unless otherwise agreed,

4. Cash and Accounts Receivable. The pro rata percentages established above shall be used for the division of all cash in the bank and all appropriate funds yet to be received from the Participating Districts or the State.

ARTICLE XXI AMENDMENTS

This Agreement may be amended at any time with the unanimous written consent of all Participating Districts.

ARTICLE XXII FINANCIAL REPORTS

Each Participating District shall submit detailed accounting of all its receipts and disbursements for the Regional Occupation Programs of the East Bay ROP maintained by it within its respective geographical area to the Governing Board upon request of the ROP Superintendent, but in any event at least once a year, as prescribed by law, during the term of this Agreement. The fiscal transactions of the East Bay ROP shall be audited annually by a firm of licensed, certified public accountants to be selected by the Governing Board and paid by the Agency.

ARTICLE XXIII ADDITION OF PARTICIPATING DISTRICTS

Additional school districts may enter into this Agreement subject to approval and conditions as agreed upon by the requesting school district's governing board, the governing board of each Participating District, the Governing Board of the Agency, the County Superintendent and the State Board of Education. The inclusion of additional school districts to this Agreement shall not be deemed dissolution of the East Bay ROP or a termination of this Agreement.

**ARTICLE XXIV
REORGANIZATION**

In the event of reorganization, as defined by Education Code Section 35700 et seq., of one or more of the Participating Districts, the successor in interest or successors in interest to the obligations of any such reorganized Participating District shall be substituted as a party or as parties to this Agreement.

**ARTICLE XXV
SEVERABILITY**

Should any portion, term, condition or provision of the Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any law of the State, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, condition and provisions shall not be affected thereby.

**ARTICLE XXVI
NOTICES**

The Governing Board, by resolution, shall designate a specific location at which to receive notices, correspondence and other communications; it shall designate one of its Participating Districts as its agent for the purpose of receiving service on behalf of the Governing Board. The Governing Board shall comply with the provisions of Section 53051 of the Government Code requiring the filing of a statement with the Secretary of State and with the County Clerk.

Notices under this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by first class mail, postage prepaid, or sent by telegram, telecopier or telex, addressed to the parties as specified on the signature page or signature pages hereof as the Notice Address for each such Participating District.

The parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent. Notices of new Participating Districts shall be sufficiently given when delivered in the manner described above to the address indicated in the amendment to this Agreement adding such new Participating District.

**ARTICLE XXVII
GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State.

**ARTICLE XXVIII
COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute one and the same Agreement.

**ARTICLE XXIX
TERMINATION**

This Agreement shall be terminated if the number of Participating Districts moving to withdraw leaves only one Participating District; provided, however, that this Agreement cannot be terminated until such time as all principal of and interest on any bonds issued by the Agency, and all other amounts payable under the indentures pursuant to which such bonds have been issued, shall have been paid in full; provided, further, however, that this Agreement and the Agency shall continue to exist for the purposes of disposing of all claims, the distribution of assets, and any other functions necessary to conclude the affairs of the Agency.

IN WITNESS THEREOF, the Initial Participating Districts hereto have caused this Agreement to be executed by their authorized officers as set forth herein below.

ALAMEDA UNIFIED SCHOOL DISTRICT
of Alameda County, State of California

By _____ Date _____
President of its Board of Education

OAKLAND UNIFIED SCHOOL DISTRICT
of Alameda County, State of California

By Vincent Matthews 12/18/08
President of its Board of Education Date
State Administrator

Approved this _____ of _____, 2008

Sheila Jordan, Superintendent of Schools
of Alameda County, State of California

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE
By Deborah Cooke
Attorney at Law