Northwest Educational Service District 189
*Together We Can*

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Dr. Gerald W. Jenkins, *Superintendent*

# Unemployment Compensation Pool Cooperative
## Interlocal Agreement

WHEREAS, RCW 39.34 and RCW 28A.320.080 together authorize the local school districts within the State of Washington to join together to form cooperatives for the purpose of providing services for the participating school districts;

WHEREAS, RCW 28A.310.180 directs educational service districts to establish cooperative service programs for school districts which will hopefully economize for the local school districts by providing services that would otherwise be more expensive if the cooperative were not formed or which will provide services that could not otherwise be efficiently acquired including services provided directly to their students;

WHEREAS, several school district superintendents and their Boards of Directors have previously determined that an unemployment compensation coverage pool is desirable and requested Northwest Educational Service District 189 to form an Unemployment Compensation Pool Cooperative to help provide this support;

WHEREAS, the Board of Directors and Superintendent of NWESD previously agreed to coordinate and operate an Unemployment Compensation Pool Cooperative; and,

WHEREAS, the school district superintendents and their Boards of Directors have determined it prudent to update and clarify the previously adopted *Unemployment Compensation Pool Cooperative Interlocal Agreement* and *Bylaws*.

NOW THEREFORE, the Unemployment Compensation Pool Cooperative (hereinafter referred to as Cooperative) is hereby modified by and between Northwest Educational Service District 189 (hereinafter referred to as NWESD) and various school and educational service districts (the signatory district to this Agreement is hereinafter referred to as District) according to the below described terms and conditions.

### I. NAME AND PURPOSE

This Cooperative shall be known as the NWESD Unemployment Compensation Pool Cooperative (hereinafter referred to as Cooperative). The purpose of the Cooperative is to form a pool to reimburse member districts for employee-related unemployment compensation obligations.

### II. ORGANIZATION

Membership in the Cooperative will be limited to member school and educational service districts that execute a copy of this Agreement. All membership applications require submission of two appropriately completed copies of this Agreement, signed by its superintendent. Membership shall entitle the District to designate a representative to the Advisory Board.

An Advisory Board consisting of the superintendent, or designee, of each district is established. This Board's purpose shall be to 1) establish an Executive Committee, 2) monitor the performance of this Agreement, 3) adopt and amend By laws, 4) ensure the Cooperative is operated consistent with those By laws, and 5) meet periodically to rule on matters such as Cooperative membership and assessment rate/fee schedules. A quorum of the Advisory Board shall require representatives from

more than fifty percent (50%) of the member districts. Participation may occur via electronic medium/vehicle.

The Advisory Board shall elect an Executive Committee, which shall 1) provide the NWESD advice related to the Cooperative's management, 2) maintain the Cooperative's By laws, including amendment recommendations to the Advisory Board, and 3) other duties as may be assigned by the Advisory Board. Membership requirements for the Executive Committee shall be established by the By laws. A quorum of the Executive Committee shall require representatives from more than fifty (50%) of the members. Participation may occur via electronic medium/vehicle.

The NWESD shall administer this Agreement and will solicit the advice of the Executive Committee on matters relating to this Agreement and shall schedule meetings of the Advisory Board as required for this purpose. Except as otherwise provided herein, management of the Cooperative is delegated to the Executive Board.

Meetings of the Executive Committee may be called by 1) its chair, 2) the NWESD Superintendent, or designee, or 3) a majority of its members. Meetings of the Advisory Board may be called by the NWESD Superintendent or Chair of the Executive Committee.

## III. BY LAWS

The initial revised By laws are appended to this Agreement and will be approved by member district execution. The Executive Committee shall be responsible for recommending By law amendments to the Advisory Board. By law revisions shall be approved by two-thirds (2/3) majority vote of the Advisory Board.

## IV. TERM OF AGREEMENT

The initial term of this revised Agreement shall become effective the date of the execution of the member District and the NWESD and shall automatically be extended in force and effect for successive calendar years, except as terminated pursuant to this Section or Section X.

Any district may terminate its participation in the Cooperative, and the incurrence of further related obligations, effective midnight December 31 of any year by providing written notice of its intent to terminate to each Cooperative member no later than September 30 of the same year.

Should a district provide appropriate written notices:

1) Any other district may then terminate its participation in the Cooperative, and the incurrence of further related obligations, effective midnight December 31 of the same year by providing written notice of its intent to terminate to each of the remaining Cooperative members no later than October 15 of the same year.

2) The NWESD may terminate its participation in the Cooperative, and the incurrence of further related obligations, effective midnight December 31 of any year by providing written notice of its intent to terminate to each Cooperative member no later than November 1 of the same year.

Discontinuing participation in this Agreement does not relieve any district of any obligations paid or payable by the Cooperative for the departing district in excess of the district's contributions. If decided by a majority vote of a quorum of the Advisory Board, any departing district shall reimburse the Cooperative for any amounts paid by the Cooperative in excess of its contributions.

## V. MEMBERSHIP IN THE COOPERATIVE, NEW MEMBERS, AND EFFECTIVE MEMBERSHIP DATE

The District shall become a full member of the Cooperative and shall designate a representative to serve on the Advisory Board.

Any district who shall become a member of the Cooperative subsequent to December 31, 2009, shall only be eligible on a quarterly basis of any subsequent year, consistent with the Washington State Department of Employment Security billing cycle. In such cases, the Executive Committee shall recommend 1) which quarterly option is practical in order to provide appropriate notices, and 2) the District's assessment rate; which will be approved by the Advisory Board, as delineated in Section VI.2.

## VI. DUTIES OF THE DISTRICT

In accordance with this Agreement, the District will:

1) Meet as needed, through its designated representative to the Advisory Board, to take action related to Cooperative membership, assessment rates, Executive Committee membership, and other matters it deems appropriate.

2) Make timely payments to the Cooperative, care of the NWESD Trustee, based on the Annual Rate of Assessment. Said rate(s) to be established in accordance with the adopted By laws and approved by the Advisory Board.

   Assessments shall be due and payable within twenty (20) calendar days of the District's normal monthly payroll processing date and will be considered delinquent on the 21st calendar day of the succeeding month. A penalty shall be assessed at the rate of one percent (1%) per month of the amount due on any delinquent payment(s).

3) Support cost containment through diligent use of the Cooperative identified and selected Third-Party Administrator (TPA) for control of unemployment compensation costs. Each District will secure this service separate and apart from the Cooperative; however, the charge for such service will be paid from the District's Cooperative Account.

4) Pay to the NWESD from its Cooperative Account a fee for management of the Cooperative Pool Account. Said fee to be reviewed annually by the Executive Committee.

5) Maintain responsibility for making required payments to the Employment Security Department in the event that funds are not available in its Cooperative Account.

6) Maintain responsibility for any fees required by the Employment Security Department as a consequence for untimely report filing.

7) Maintain responsibility for making any required report(s) to the Employment Security Department.

8) Be responsible for any obligations paid or payable by the Cooperative in excess of its Cooperative Account, should it elect to terminate membership pursuant to Sections IV and/or X.

9) Consider and meet all federal audit requirements related to any excess fund distribution.

## VII. DUTIES OF THE NWESD

In accordance with this Agreement, the NWESD shall perform the following functions and duties, within the constraints of funds made available by the District, as the Cooperative Account Trustee:

1) Receive all Cooperative Account payments from the District per Section VI.2.
2) Establish and maintain a Cooperative Pool Account with the Skagit County Treasurer, and deposit all payments in this Fund.
3) Invest funds on behalf of the Cooperative Account.
4) Assign the NWESD auditing officer, or designee, to sign all claim vouchers on behalf of the Cooperative.
5) Pay on behalf of the district(s) to the extent of each district's available Cooperative funds all Department of Employment Security unemployment claims for actual benefit liabilities paid. Such payment(s) shall be made when they have been properly approved and presented to NWESD by the District(s) and/or its agent.
   A) In the event an individual district's Cooperative fund balance is not sufficient in any one month for payment of all the district's claims approved and presented to NWESD, the following shall apply:
      i) The claims will be paid with available Cooperative funds .
      ii) The district will be notified of its deficit balance and offered the opportunity to restore an acceptable balance
      iii) The Executive Committee shall be notified so it may take whatever action that it deems necessary.
   B) In the event an individual district's Cooperative fund balance is not sufficient in any one month for payment of all the district's claims approved and presented to NWESD and the Cooperative as a whole does not have funds available to pay the claims, the Executive Committee shall be notified and shall determine the means of assessment sufficient to pay all outstanding claims.
6) Pay from the Cooperative Account Fund all appropriate expenses including, but not limited to Washington State Auditor's Office (SAO) fees, Third Party Administrator (TPA) fees, and Actuary fees for services related to the Unemployment Pool Account.
7) Maintain adequate financial records in order to properly manage the Cooperative as well as provide financial reports to the Executive Committee and Advisory Board.
8) Be responsible for employment of any staff and the general administration of the Cooperative.

## VIII. CONFIDENTIALITY/PUBLIC DISCLOSURE

All data or information furnished to NWESD as Cooperative Account Trustee by the District pursuant to this Agreement shall remain the property of the District and shall not be disclosed to third parties except by written consent of the District. The only exceptions to this will be data or information 1) requested by the Washington State Department of Employment Security, 2) requested by the Washington State Auditor's Office within the constraints of the Public Disclosure Laws, and/or 3) ordered to be provided by a Court with jurisdiction.

No records of the District shall be made available for public inspection or copying by any party except as set forth in Section VII without written consent of the District. Requests pursuant to RCW

42.17 for inspection or copying of public records of the District held or maintained by NWESD as Trustee, shall be referred to the District.

## IX. DISPUTE RESOLUTION/VENUE STIPULATION

Any dispute, claim or grievance arising out of or relating to the interpretation of application of this Agreement shall be submitted to the Executive Committee for its determination. Any Executive Committee decision may be appealed to the Advisory Board for final resolution by majority vote. Decisions of the Advisory Board shall be final and binding on all parties.

This Agreement has been made and delivered within the State of Washington, and it is mutually understood and agreed by each party hereto that it shall be governed by the laws of the State of Washington.

## X. TERMINATION FOR BREACH

If the NWESD fails to comply with the terms and conditions of this Agreement, the Cooperative, by two-thirds (2/3) majority vote of the total Advisory Board, upon thirty (30) days prior written notice to NWESD, may terminate NWESD as the Administrator.

If the District fails to comply with the terms and conditions of this Agreement, the Advisory Board shall review the conditions of the breach of the Agreement and upon two-thirds (2/3) majority vote of the Executive Committee, upon thirty (30) days prior written notice to the District, may terminate this Agreement with the District. In this regard, all decisions of the Executive Committee are final.

## XI. DISSOLUTION OF COOPERATIVE

The Cooperative may be dissolved as of midnight, December 31, of any year by a two-thirds (2/3) vote of the Advisory Board. Such action for dissolution shall occur no later than November 1 of such year.

## XII. DISTRIBUTION OF ASSETS UPON DISSOLUTION/TERMINATION

Upon dissolution of the Cooperative or termination of the Agreement with the District hereto, the following provisions shall apply:

1) If, for any reason, the Cooperative is dissolved, each district shall be entitled to its share of the assets of the Cooperative Account on the date of dissolution. Pro-rata share shall be computed based upon its contributions to the Cooperative Pool Account less obligations paid on its behalf.

2) If a district's membership in the Cooperative is terminated, under Section IV or X, such district shall be entitled to its share of the assets of the Cooperative Account on the date of termination, less any outstanding obligations.

3) No distribution of funds to any district shall be made if assets of the Cooperative Account are less than its liabilities, including those to the Department of Employment Security.

4) No distribution of assets shall be made to any district owing the Cooperative funds until such amounts are paid in full and all outstanding obligations have been met.

5) Excess fund balances may be distributed to member districts pursuant to the definition and requirements and cautions establish in the By laws. Member districts are advised that adherence to federal audit requirements remains a district responsibility.

## XIII. ASSIGNMENT

This Agreement may not be assigned by either party without prior written consent of the parties.

## XIV. WAIVER AND SEVERABILITY

No provision of this Agreement, or the right to receive reasonable performance of any act called for by its terms, shall be deemed waived by a breach thereof as to a particular transaction or occurrence.

If any term or condition of this Agreement or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other terms, conditions, or applications of the Agreement, which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of the Agreement are declared severable.

## XV. NONDESCRIMINATION

No person shall, on the grounds of race, creed, color, national origin, gender, marital status or the presence of any sensory, mental or physical handicaps, be excluded from participation in or be denied the benefit of, or otherwise be subjected to discrimination with regard to any activity pursuant to this Agreement.

## XVI. SUSPENSION AND DISBARMENT ASSURANCES

The parties to this Agreement certify, and each relies thereon in execution of this Agreement, that their entity nor its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any Federal governmental agency or department. "Principals'" for the purposes of this certification, mean officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of subsidiary, division, or business segment; and similar positions). Further, each party agrees to provide the other(s) immediate written notice if, at any time during the term of this Agreement, including any renewals hereof, it learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances. Each party's certification via the execution of this Agreement is a material representation of fact upon which each party has relied in entering into this Agreement. Should either party determine, at any time during this Agreement, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, it may terminate this Agreement in accordance with the terms and conditions therein.

## XVII. AGREEMENT

The parties acknowledge that they have read and understand this Agreement, including any supplements or attachments, and agree in every particular. The parties further agree that this Agreement, together with any appendices, constitutes the entire Agreement between the parties and supersedes all communications, written or oral, related to the subject matter of this Agreement. This Agreement may be modified only by a written resolution approved by a two-thirds (2/3) majority of the Advisory Board.

Further, the parties indicate they have the legal authority to obligate their respective entity to the terms and conditions contained herein.

Agreeing on behalf of:

| Concrete School District | Northwest Educational Service District 189 |
|---|---|
| Barbara Hawkings | Dr. Gerald W. Jenkins 5/5/10 |
| Barbara Hawkings<br>Superintendent | Dr. Gerald W. Jenkins<br>Superintendent |
| Date | Date |

***Attach copy of authorizing school board resolution number*** 981.

**CONCRETE SCHOOL DISTRICT NO. 11**
**AUTHORIZATION FOR UNEMPLOYMENT POOL COOPERATIVE**

**RESOLUTION NO. 981**

**WHEREAS, RCW 39.34 and RCW 28A.320.080 together authorize the local school districts within the State of Washington to join together to form cooperatives for the purpose of providing services for the participating school districts;**

**WHEREAS, RCW 28A.310.180 directs educational service districts to establish cooperative service programs for school districts which will hopefully economize for the local school districts by providing services that would otherwise be more expensive if the cooperative were not formed or which will provide services that could not otherwise be efficiently acquired including services provided directly to their students;**

**WHEREAS, Northwest ESD 189 operates an Unemployment Compensation Pool Cooperative for local school districts which is the most economical means to provide unemployment compensation;**

**WHEREAS, Northwest ESD 189 determined it prudent to update and clarify the existing agreement;**

**IT IS HEREBY RESOLVED, the Board of Directors of Concrete School District No. 11, Skagit County, Washington, authorizes continued participation in the Unemployment Compensation Pool Cooperative**

**DATED this 24th day of March 2010.**

CONCRETE SCHOOL DISTRICT NO. 11

**Board Chairman**

**Director**

**Director**

**Director**

**Director**

**ATTEST:**

**Secretary to the Board of Directors**