



WASHINGTON SCHOOLS RISK MANAGEMENT POOL

COOPERATIVE RISK MANAGEMENT POOL ACCOUNT AGREEMENT

THIS AGREEMENT is made and entered into by and between individual or interlocal cooperative groups of EDUCATIONAL SERVICE DISTRICTS OF THE STATE OF WASHINGTON and PUBLIC SCHOOL DISTRICTS OF THE STATE OF WASHINGTON which are signators hereto.

WITNESSETH:

WHEREAS, RCW 48.62.031 provides that local governmental entities may enter into agreements with each other to provide joint programs, which include programs for the joint purchasing of insurance, joint self-insuring and/or joint hiring or contracting for risk management, claims, and administrative services; and

WHEREAS, RCW 48.62.031 authorizes any organization of local governmental entities organized for the purposes hereinabove specified to have certain powers and functions; and

WHEREAS, the provisions of RCW 39.34.010 permit local governmental units to enter into agreements with each other, to cooperate on a basis of mutual advantage and thereby to provide services in an efficient manner; and

WHEREAS, the parties to this agreement believe that it is in the mutual benefit of the parties to join together to establish an organization to accomplish the purposes hereinafter set forth; and

WHEREAS, it is the desire of the parties hereto to provide a program for the joint purchase of insurance or reinsurance, joint self-insurance, and related services for their mutual advantage; Now, Therefore,

FOR AND IN CONSIDERATION of the mutual covenants and agreements contained herein, the parties agree as follows:

I. ESTABLISHMENT OF ORGANIZATION

- 1.1 Pursuant to RCW 48.62.031 and in accordance with the provisions of RCW 39.34.030(4), there is hereby established an organization to be known as the Washington Schools Risk Management Pool, hereinafter designated as the "Pool."

II. PURPOSE

- 2.1 The purpose of the Pool shall be to join together in a cooperative manner and form a pool to provide its members the capability and authority to jointly purchase property/liability insurance, establish and maintain a reserve to pay for self-insurance coverage, provide a plan of self-insurance, and provide related services, including a cooperative program of risk management. By providing risk management services, the Pool has as one of its purposes to reduce losses and to decrease the cost of claim expenses.

III. DEFINITIONS

- 3.1 "Agreement" means this Cooperative Risk Management Pool Account Agreement.
- 3.2 "Board" or "Board of Directors" shall mean the joint board contemplated under RCW 39.34.030 (4) (a) as the governing body of the Pool, consisting of one representative from each district signatory to this Agreement.
- 3.3 "District" shall mean a school district or an interlocal cooperative of school districts within the State of Washington.
- 3.4 "ESD" shall mean an educational service district within the State of Washington.
- 3.5 "Executive Board" shall mean the executive body consisting of ten representatives elected from the school district membership of the Board of Directors and shall also include, as non-voting members, representatives of the ESDs signatory hereto.
- 3.6 "Fiscal year" shall mean the accounting year for the Pool, which shall be from September 1 through August 31, except as otherwise provided in Section 10.2.
- 3.7 "Member" or "Member District" shall mean a party to this agreement.
- 3.8 "Pool" shall mean the entire group of Member Districts comprising the organization created by this agreement under RCW 39.34 and known as the Washington Schools Risk Management Pool.
- 3.9 "Interlocal Cooperative" shall mean a group of entities formed under RCW 39.34.

IV. POWERS

- 4.1 The Pool is hereby delegated, and shall have, the following powers and functions:
- (a) To contract or otherwise provide for risk management and loss control services;
 - (b) To contract or otherwise provide legal counsel for the defense of claims and/or other legal services;
 - (c) To consult with the State Insurance Commissioner and/or the State Risk Manager;
 - (d) To jointly purchase insurance or reinsurance coverage in such form and amount as the Pool's Members may by contract agree;
 - (e) To jointly establish a self-insurance program and reserves in such form and amount as permitted by law and as the Pool's Members may, or by action of the Executive Board, by contract, agree;
 - (f) To make contracts (including employment contracts), to sue and be sued and to possess all of the corporate and other powers, privileges or authority exercised or capable of exercise by each party to this agreement;
 - (g) To sue and be sued in the name of the Pool, without the necessity of naming or joining all Member Districts, in the courts in the State of Washington;

- (h) To possess any other powers and perform all other functions reasonably necessary to carry out the purposes of RCW Chapter 39.34, RCW Chapter 48.62 and the purposes for which this organization is formed;
- (i) Acting on behalf of Districts only, to borrow money and issue obligations in the name of the Pool as evidence thereof as provided in general statutes relating to the authority of Districts to borrow money for any lawful purpose for which the Pool is created, payable from revenues legally available to school districts for the payment of insurance premiums, other than local tax revenues provided, that any action under this subsection shall only be on behalf of and inure to the benefit of Districts.

V. TERM OF AGREEMENT

- 5.1 Initial Term. This agreement shall then be automatically renewed from year to year, with renewal dates from September 1 to August 31 of each year. Such automatic renewal will continue until this agreement is terminated in accordance with Article XIII of this agreement.
- 5.2 Initial Term of New Members. As each new District or ESD executes this agreement, the agreement shall commence and be operative and effective as to that District or ESD from the date of its execution by the District or the ESD.

VI. ORGANIZATION

- 6.1 Pool Joint Board. The Pool shall be composed of the Member Districts. A joint board consisting of one representative from each Member District shall be responsible for administering the business and activities of the Pool. The Member Districts shall delegate the responsibility for administration and business activities of the Pool to an Executive Board as set forth in Article VIII of this agreement reserving to itself the power to influence or change decisions of the Executive Board as set forth in the Bylaws. The Executive Board shall further delegate fiscal personnel and other management activities of the organization in accordance with Article IX of this agreement.

VII. BOARD OF DIRECTORS

- 7.1 General. Each Member District is entitled to the rights and privileges and is subject to the obligations of membership, as provided in this agreement. The Board of Directors is composed of one representative from each District and each ESD. Each Member District is authorized to appoint one representative (or in the absence of the primary representative an alternate representative) who will be authorized to vote on behalf of the Member District. Each representative shall have one vote. A majority vote of the Board of Directors shall be required to transact the business of the Board of Directors.
- 7.2 Other Members. Additional Districts and ESDs may become parties to this agreement and become Members of the Pool, after approval has been given by the Executive Board by a two-thirds majority vote, and after payment of any initial fee, as determined by the Executive Board.
- 7.3 Withdrawal of Membership. Any Member may withdraw as a party to this Agreement by giving written notice to the Pool no later than May 31 of any fiscal year, but such withdrawal shall be effective only at the end of the subsequent third fiscal year. No refund or repayment shall be given to any withdrawing Member, except in accordance with Section XIII of this agreement. No withdrawal shall extinguish the obligation of the withdrawing Member to make payments required to be made hereunder.

- 7.4 Termination of Membership. Any Member may be terminated for: (a) failure to pay contributions or assessments when due (but no such termination shall extinguish the obligation of the terminated Member to make the payments required to be made hereunder); (b) failure to comply with the risk management standards established by the Executive Board; (c) failure to comply with the terms and conditions of this agreement; or (d) for any other sufficient cause, such cause to be determined by the Executive Board. A two-thirds majority vote of the Executive Board shall be required to terminate a Member. The effective date of the termination shall be designated by the Executive Board and will be not less than 90 days from the date of the vote of the Executive Board.

VIII. EXECUTIVE BOARD

- 8.1 Establishment. Except as otherwise expressly provided herein or as set forth in the Bylaws, management of the Pool is delegated by the Board of Directors to an Executive Board which will consist of ten individuals representing ten separate Members and one individual from each Educational Service District which is a party to this agreement. Only individuals representing Districts have the power to vote on matters presented to the Executive Board for a vote.
- 8.2 Executive Board Members. Each of the ten directors with voting power shall serve three-year terms. Three directors shall be from Member Districts which are large districts; three directors shall be from Member Districts which are medium districts; three directors shall be from Member Districts which are small districts; and one director shall be from Member Districts which are interlocal cooperatives. The categorization of districts as large, medium, or small shall be based upon full time equivalent (FTE) students, and shall be as set forth in the Bylaws of the Pool. Vacancies on the Executive Board shall be appointed by the Executive Board until filled by election at the annual meeting of the Board of Directors.
- 8.3 Bylaws and Policies. The Executive Board shall adopt bylaws and policies under which the Pool shall operate. Bylaws shall be approved by a two-thirds majority vote of the Executive Board. The Policies of the Pool shall incorporate the financial plan, management plan and plan specifying the conditions and responsibilities of the participants as required under RCW 48.62.071 and as approved by the State Risk Manager.
- 8.4 Meetings: Executive Sessions. The Executive Board may provide for executive sessions closed to the public during a meeting of the governing body as authorized by RCW 48.62.101, to consider litigation and settlement of claims when it appears that public discussion of such matters would impair the group's ability to conduct its business effectively.
- 8.5 Duties of Executive Board. In addition to other duties set forth herein, the Executive Board is responsible for management of the Pool and specifically:
- (a) The Executive Board is required to supervise and monitor the insurance program to make certain the Pool is in compliance with state law as established in RCW 48.62, to file the reports required and to comply with rules and regulations promulgated pursuant to RCW 48.62.
 - (b) The Executive Board shall provide for umbrella coverage for the Member Districts;
 - (c) The Executive Board shall provide for insurance coverage for those claims which the Pool plans to jointly self-insure, such coverage to be effective only in the event of exhaustion of the joint self-insurance pool's resources for a given fiscal period;

- (d) The Executive Board shall establish deductibles and/or limits to any coverage that is provided and shall inform the Member Districts of such deductibles and/or limits;
- (e) The Executive Board shall provide an annual report (or more frequent reports if required) of the operations of the Pool to the Member Districts, and the State Risk Manager.

IX. MANAGEMENT OF THE POOL'S BUSINESS ACTIVITIES

- 9.1 Contract Providers. The Executive Board may contract for services to be performed on behalf of the Pool. There may be more than one contract for services required by the Board and the Executive Board shall define such services in its contract or contracts. If the general supervisory control over day-to-day decisions and administrative activities is delegated by contract it may be delegated only to a Member District.
- 9.2 Management Activities. The management activities which may be delegated by contract include, but are not limited to, the following:
- (a) Management and operation of the joint self-insurance pool established by the Pool;
 - (b) Establishing and maintaining a budget for administrative services;
 - (c) Providing required information to the State Insurance Commissioner and/or State Risk Manager;
 - (d) Contribution billing to individual Districts and ESDs for their proportionate charges;
 - (e) Payment of insurance;
 - (f) Payment of management and claims sustained by Members of the Pool;
 - (g) Assisting each Member District's designated risk manager with the risk management function;
 - (h) Providing loss prevention, claims adjustment and claims management services to each Member District as needed;
 - (i) Providing contract provisions relating to indemnity, hold harmless and insurance provisions to the extent expressly permitted by an applicable statute;
 - (j) Providing adequate staffing for the responsibilities of the administrator under the terms of the contract, such staffing to include a risk manager; and
 - (k) Providing an annual report to the Executive Board within sixty days after the close of each fiscal year.
- 9.3 Costs. Costs and charges for services rendered shall be negotiated on an annual basis.

- 9.4 Termination of Contract. The Executive Board shall retain the power to terminate a contract entered into under this Article IX when, in the opinion of the Executive Board (or the Board of Directors if such power is reserved in the Bylaws), the best interests of the Pool are served by such termination. Such termination shall be made upon two-thirds majority vote of the Executive Board. The effective date of the termination shall be designated by the Executive Board and shall be not less than 90 days. In the event a contract is terminated pursuant to the provisions of this section, the Executive Board shall execute a new contract as soon as possible to provide for the services required.

X. FINANCIAL REQUIREMENTS

- 10.1 General. The financing of the activities of the Pool shall be in accordance with the financial plan adopted by the Executive Board.
- 10.2 Fiscal Year. Each fiscal year of the Pool shall be from September 1 to August 31.
- 10.3 Audits. The Pool shall be subject to audit by the State Auditor of the State of Washington. The costs of such audits shall be borne by the Pool.
- 10.4 Expenditures. No expenditure shall be made from any funds of the Pool unless authorized by written policies of the Executive Board. Contributions and assessments for insurance premiums shall be under the control and supervision of the Executive Board. All parties having check-writing authority on Pool funds shall be required to post a bond in an amount approved by the Executive Board.
- 10.5 Strict Accountability. There shall be strict accountability of funds generated under this agreement. The Executive Board shall require, receive and review periodic accountings of all funds and financial transactions of the Pool and shall adopt a budget in accordance with RCW Chapter 28A.65. A report of receipts and expenditures shall be made by the Executive Board to the Member Districts within 90 days after the close of each fiscal year.
- 10.6 SPI and State Risk Manager Rules. This agreement and the administration and operation of the Pool shall be subject to such rules and regulations as are promulgated by the State Risk Manager and/or by the Superintendent of Public Instruction.
- 10.7 Annual Contribution. Except as provided in Section 10.8 below, all costs of the self-insurance program shall be funded by annual contributions charged to the Member Districts participating in the program each fiscal year. Such contributions shall be in an amount determined by the Executive Board. The amount of the contribution to be charged for each Member District participating in the Program shall include an allocation of the expected program losses, program reinsurance costs and program administrative costs for the year.
- 10.8 Assessments. The Executive Board may impose assessments, in addition to the contributions required under Section 10.7, on all participating Member Districts, in order to assure adequate funds to the Pool for the payment of all losses. Such assessments shall be in an amount determined by the Executive Board.
- 10.9 Borrowing. If the borrowing of money is authorized by the Executive Board, its action shall be, and be construed as, action taken on behalf of Districts only. No portion of the repayment of principal or interest on any such borrowing shall ever be charged against an Educational Service District nor shall such borrowing be, or be deemed to be, made on behalf of an Educational Service District.

XI. LIABILITY

- 11.1 General. The Executive Board shall have no power or authority to incur any obligation on the part of, or chargeable to, any Member District in excess of the requirement of each Member District to compensate the Pool for the individual Member's share or obligation for the insurance contemplated and authorized by this agreement, and for the individual District share of any borrowing of money. In the event the assets of the joint self-insurance pool are not sufficient to cover its liabilities, each Member District shall be obligated to bear a portion of the Pool's excess liabilities in such amount as determined by the Executive Board. The debts, obligations and liabilities of each Member District shall not become the debts, obligations, and liabilities of other Member Districts. If a Member District is held liable upon any judgment for damages caused by a wrongful or negligent act or omission of said Member District occurring in the performance of this agreement, no other Member District shall be liable on such judgment or be obligated to make any contribution or assessment toward such judgment.
- 11.2 No Third-Party Rights. This agreement is not intended to create rights in any third parties who are not signatories to this agreement.

XII. INVESTMENTS

- 12.1 Permissible Methods. The Executive Board may invest all or a portion of the assets of the Pool by either or both of the following methods:
- (a) Directly investing such assets in accord with Section 12.2 of this agreement; or
 - (b) Depositing such assets with the treasurer of any county within the territorial limits of which any of the Member Districts lie, to be invested by such county treasurer for the Pool.
- 12.2 Permissible Investments. If the Executive Board elects to invest all or a portion of the assets of the Pool pursuant to Section 12.1 (a) of this agreement, such assets shall be invested only in those classes of securities and investments specified in RCW 48.62.111.

XIII. DISSOLUTION

- 13.1 Method. The Pool may be dissolved by two-thirds majority vote of the Board of Directors, with the effective date of such dissolution being the end of any fiscal year of the Pool.
- 13.2 Distributions. Upon termination of this agreement pursuant to Section 13.1, any surplus money shall be returned to the then current Member Districts in proportion to the contributions made by such Member Districts, less the outstanding obligations of that Member District to the Pool, such obligations to include future payments for liabilities incurred and liabilities incurred but not reported as of the date of dissolution. Similar disposition shall be made as to any property acquired as a result of the exercise of powers under this agreement.

XIV. RISK POOLING

- 14.1 General. Because the amount required to fulfill self-insurance obligations cannot be known precisely in advance, assessments, reserve requirements and other financial parameters of the Pool's operation must necessarily be initially established and subsequently maintained by means of estimates. Any interim transactions and their effect on the Pool notwithstanding, it is mutually agreed by the Pool and each of its Member Districts that all Member Districts participating in the Pool as insureds for any period of time will be liable for payment of any assessments, premiums and other amounts necessary to meet any benefit, expense or other lawful obligation of the Pool arising during that period of time. This liability will apply without limitation as to amount, and without any restriction as to when any portion of the obligation is identified. Specifically, any Member Districts whose participation in the Pool is terminated, voluntarily or involuntarily, or in the event of dissolution, will remain liable for payment of any Pool obligations attributable to their period of membership, regardless of when part or all of those obligations become known.

XV. GENERAL

- 15.1 Assignment. This agreement may not be assigned by any Member District hereto without prior written consent of the Executive Board.
- 15.2 Waiver. 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.
- 15.3 Severability. 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; and to this end, the terms and conditions of the agreement are declared severable.
- 15.4 Notices. Any notices required to be given to Member Districts shall be sent to the superintendent or chief executive officer of the Member District.
- 15.5 Amendment of Agreement. This agreement may be amended at any time by a two-thirds vote of the entire Board of Directors after the following notice:
- (a) Each Member District shall have a minimum of 30 days' notice prior to any meeting at which a proposed amendment is to be voted upon; and
 - (b) Each Member District shall be provided the text of the proposed amendment at least 30 days prior to the date of the meeting at which the amendment is to be voted upon.
- 15.6 Disputes. Any dispute, claim, or grievance out of or relating to the interpretation or application of this agreement shall be submitted first to the Executive Board for decision. In the event that the dispute, claim or grievance is not resolved by the Executive Board, the dispute, claim, or grievance shall be presented to the Board of Directors, whose decision shall be final.
- 15.7 Counterparts. This agreement may be executed on any number of duplicate counterparts hereof, each of which shall be deemed to be an original.

- 15.8 Indemnification of Directors, Officers, Employees and Administrator. The members of the Board of Directors shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties for the Pool and shall not be liable for any mistake of judgment or other action taken or omitted by any agent, employee or independent contractor selected in good faith by them or any of them; nor for loss incurred through investment of agency funds or failure to invest. No such director, officer or employee shall be liable for any action taken or omitted by any other officer, director or employee. The Pool shall indemnify and reimburse each such director, officer and employee for expenses, including attorneys' fees, and such amount of any judgment money decree, fine, penalty or settlement for which he may become liable by reason of his being, or having been, a director, officer or employee of the Pool or of the administrator who exercises powers or performs duties for the Pool, except in relation to matters as to which he is finally adjudged in any action, suit or proceeding to be liable for failure to act in good faith in the performance of his duties as such director, officer or employee.
- 15.9 Entire Agreement. The parties acknowledge they have read and understand this agreement, including any supplements or attachments thereto, and do agree thereto 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, heretofore related to the subject matter of this agreement. This agreement may be modified only in writing, signed by all parties.
- 15.10 Effective Date. This Agreement shall become effective when two thirds of the Member Districts have approved it in accordance with the provisions of Section 15.5.

IN WITNESS WHEREOF this agreement has been executed and the date of execution has been indicated.

Executed August 30, 1986
Revised September 7, 1988
Revised October 26, 1993
Revised October 19, 1999