

INTERLOCAL PARTICIPATION AGREEMENT

EXHIBIT A

Texas Energy Center/Electricity and Natural Gas Aggregation Services

This Interlocal Participation Agreement (“Agreement”) is entered into by and between the Texas Energy Center (“TEC”)/Electricity and Natural Gas Aggregation Services, an administrative agency of cooperating local governments, acting on its own behalf and the behalf of all participating local governments, and the undersigned local government of the State of Texas (“TEC Member”). The purpose of this Agreement is to facilitate compliance with State bidding requirements, to identify qualified vendors of commodities, goods and services, to relieve the burdens of the governmental purchasing function and to realize the various potential economies, including administrative cost savings for TEC Members.

WITNESSTH:

WHEREAS, the TEC Members are authorized by Chapter 791, et seq., The Interlocal Cooperation Act of the Government Code (the “Act”) and Chapter 44.031 of the Texas Education Code (the “Code”), to agree with other local governments to form purchasing cooperatives such as the TEC; and

WHEREAS, the TEC is an administrative agency of local governments cooperating in the discharge of their governmental functions;

WHEREAS, the TEC has engaged the services of a Class IIA Aggregator registered and in good standing with the Public Utility Commission of Texas (hereinafter the “Aggregator”), to act as purchasing agent and energy consultant for its TEC members, as required by the TEC Members; and

WHEREAS, the TEC Member does hereby adopt this Interlocal Participation Agreement, and such further amendments as may be made in the future, reflecting the evolving mission of the TEC.

NOW BE IT RESOLVED, that the undersigned TEC Member in consideration of the agreement of the TEC and the TEC Members to provide services as detailed in this agreement, does hereby agree to the following terms, conditions and general provisions.

TERMS AND CONDITIONS

1. **Adopt Organizational Interlocal Cooperation Agreement.** The TEC Member by the adoption and execution of this Agreement hereby adopts and approves this Interlocal Participation Agreement and all further amendments as may be made in the future.
2. **Term.** The one-year term of this Agreement shall commence at 12:01 am on the date of approval and shall expire at the end of the term, as noted in the Region One Education Service Center Purchasing Cooperative General Interlocal Membership Agreement, unless payment of the annual, non-refundable special membership fee is made prior to expiration or unless sooner terminated in accordance with the provisions of this Agreement or through a notice of nonrenewal by either party.
3. **Payment for Services.** The TEC Member hereby elects to participate in the Texas Energy Center/Electricity and Natural Gas Aggregation Services and to pay for the services provided by TEC and the Aggregator in accordance with the amounts stated in the agreement between the TEC and the Aggregator, a copy of which is attached hereto as “**Attachment 1**”, and incorporated by reference herein.
4. **Cooperation with TEC.** The TEC member further agrees to cooperate with and assist the TEC in performing the TEC’s obligations under the TEC’s agreement with the Aggregator (“Attachment 1”), and to do all things reasonably necessary to assist the TEC and/or the Aggregator in the procurement process and in carrying out other functions set forth in the TEC/Aggregator Agreement (“Attachment 1”), as may be requested by the TEC and/or the Aggregator.
5. **Authorization.** The TEC member hereby authorizes the TEC to act on its behalf with respect to providing notice to retail energy providers of the Aggregator’s authority to act as the TEC member’s purchasing agent and consultant.
6. **Termination.**
 - a. **By the TEC Member.** This Agreement may be terminated by the TEC Member due to a material breach by the TEC and/or Consultant with a thirty (30) day prior written notice to the TEC, following a twenty (20) day opportunity to cure, provided all charges owed to the TEC and/or Consultant have been fully paid.
 - b. **By the TEC.** The TEC may terminate this Agreement by:
 - (1) Giving ten (10) days’ notice by certified mail to the TEC Member, if the TEC Member fails or refuses to make the payments or contributions as herein provided; or
 - (2) Giving thirty (30) days’ notice by certified mail to the TEC Member, if the TEC Member fails to abide by this Agreement, the Guidelines of the TEC, or any procedure of the TEC.
 - c. **Termination Procedure.** If the TEC Member terminates its participation during the term of this Agreement or breaches this Agreement, or if the TEC terminates participation of the TEC Member under the provision of this Article, the TEC Member shall bear the full financial responsibility for any

increases in the cost of its electricity after the termination date, and for any unpaid charges accrued during its term of membership in the TEC. The TEC may seek the whole amount due, if any, from the terminated TEC Member. The TEC Member will not be entitled to a refund of membership fees paid.

7. **Payments.** The TEC Member agrees to pay member fee based on a plan adopted by the TEC, which plan is attached hereto in “Attachment 1” as discussed in Section 3 Consideration, and incorporated for all purposes as if fully set forth herein. Contributions will be made through the Retail Energy Provider. The TEC reserves the right to collect all funds that are due to the TEC in the event of termination by TEC Member or breach of this Agreement by TEC Member.

GENERAL PROVISIONS

1. **Authorization to Participate.** Each TEC Member represents and warrants that its governing body has duly authorized its participation in the TEC.
2. **Guidelines.** The TEC Member agrees to abide by the Guidelines of the TEC, as they may be amended, and any all reasonable policies and procedures established by the TEC.
3. **Compensation.** The parties agree that the any payments under this Agreement and all related exhibits and documents are amounts that fairly compensate the TEC and/or its Consultant for the services or functions performed under the Agreement.
4. **Cooperation and Access.** The TEC Member agrees that it will cooperate in compliance with any reasonable requests for information and / or records made by the TEC and/or the Aggregator. The TEC reserves the right to audit the relevant records of any TEC Member. Any breach of this Article shall be considered material and shall make the Agreement subject to termination on ten (10) days written notice to the TEC Member.
5. **Coordinator.** The TEC Member agrees to appoint a program coordinator who shall have expressed authority from the Member’s governing body, in the form of a Resolution, to represent and bind the TEC Member, and the TEC will not be required to contact any other individual regarding TEC matters. Any notice to or any agreements with the coordinator shall be binding upon the TEC Member. The TEC Member reserves the right to change the coordinator as needed by giving written notice to the TEC. Such notice is not effective until actually received by the TEC.
6. **Current Revenue.** The TEC Member hereby warrants that all payments, contributions, fees and disbursements required of it hereunder shall be made from current revenues budgeted and available to the TEC Member.
7. **Defense and Prosecution of Claims.** The TEC Member authorizes the mediation, or any other form of alternative dispute resolution, or other appearance of the TEC and / or any past or current TEC Member in litigation, claim or dispute, and to engage counsel and appropriate experts, in the TEC’s sole discretion, with respect to such litigation, claim or disputes. The TEC Member does hereby agree that any suit brought against the TEC or a TEC Member may be defended in the name of the TEC or the Member by the counsel selected by the TEC, in its sole discretion, or its designee, on behalf of and at the expense of the TEC as necessary for the

prosecution of any litigation. Full cooperation by the TEC Member shall be extended to supply any information needed or helpful in such prosecution or defense. Subject to specific revocation, the TEC Member hereby designates the TEC to act as a class representative on its behalf in matters arising out of this Agreement.

8. **Governance.** The TEC shall be governed by the Region One ESC Board of Directors (“Board”) in accordance with the Guidelines.
9. **Limitations of Liability.** TEC, THE AGGREGATOR, DO NOT WARRANT THAT THE OPERATION OR USE OF TEC SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. TEC, ITS ENDORSERS AND SERVICING CONTRACTORS, HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO ANY INFORMATION, PRODUCT OR SERVICE FURNISHED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES AGREE THAT IN REGARD TO ANY AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER UNDER ANY CIRCUMSTANCES FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
10. **Merger.** This Interlocal Participation Agreement, Terms and Conditions, and General Provisions, together with the Guidelines, Exhibit and Attachments, represents the complete understanding of the TEC, and TEC Member electing to participate in the TEC.
11. **Notice.** Any written notice to the TEC shall be made by first class mail, postage prepaid and delivered to the Administrator for Business/Finance Services, Region One ESC, 1900 West Schunior Street, Edinburg, TX 78541-2233.
12. **Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and venue shall lie in Hidalgo County, Texas.
13. **Warranty.** By the execution and delivery of this Agreement, the undersigned individuals warrant that they have been duly authorized by all requisite administrative action required to enter into and perform the terms of this Agreement.
14. **Texas Public Information Act.** The requirements of the Texas Public Information Act, Chapter 552 of the Texas Government Code, Subchapter J, may apply to this Agreement if it is valued at more than \$1 million. The Aggregator agrees the Agreement can be terminated if the Aggregator knowingly or intentionally fails to comply with a requirement of that subchapter, including the preservation of all “contracting information” (as defined in 552.003) and the provision, upon request of the ESC, of all contracting information. Contracting information includes, but is not limited to, records, communications and other documents related to any selection process, contract, payments, receipts, scope of work, and performance.
15. **Delegation of Authority.** The governing Board of the TEC Member hereby authorizes its Board President, Superintendent or the Superintendent’s designee to execute the Interlocal Participation Agreement and any other agreements or documents necessary to carry out the TEC Member’s participation and to make

budgeted purchases of electricity and natural gas from energy providers procured by TEC.

IN WITNESS WHEREOF, the parties, acting through their duly authorized representatives, sign this Agreement as of _____, 20__.

TO BE COMPLETED BY THE TEC:

TEXAS ENERGY CENTER/ELECTRICITY AND NATURAL GAS
AGGREGATION SERVICE, acting on behalf of TEC Members

By: _____ Date: _____
Dr. Eduardo Cancino

TO BE COMPLETED BY THE TEC MEMBER:

(Name of Local Government)

By: _____ Date: _____
(Signature of authorized representative of TEC Member)

(Printed name and title of authorized representative)

**Coordinator for the
TEC Member is:**

Name

Address

City

TEXAS, _____
(Zip Code)

Phone

Fax

E-mail Address

BOARD RESOLUTION

OF

_____, AND
(Name of Local Government)

TEXAS ENERGY CENTER/ELECTRICITY AND NATURAL GAS AGGREGATION SERVICES

WHEREAS, the _____, local government, (hereinafter “TEC Member”) pursuant to the authority granted by Article 791 et seq. of the Interlocal TEC Act, as amended and Chapter 44.031 of the Texas Education Code, desires to participate in the purchasing program of the TEC;

WHEREAS, _____, local government has elected to be a Member in the Texas Energy Center/Electricity and Natural Gas Aggregation Services (hereinafter “TEC”), a program created by local governments in accordance with and pursuant to the Interlocal Cooperation Act (“Act”), Chapter 791, Texas Government Code and Chapter 44.031 of the Texas Education Code;

WHEREAS, the TEC Member is of the opinion that participation in the TEC’s purchasing program will be highly beneficial to the taxpayers of the local government through the efficiencies and potential savings to be realized; and

WHEREAS, the TEC Member desires to participate and join with other local governments in a TEC Interlocal agreement (“Agreement”) for the purpose of fulfilling and implementing their respective public and governmental purposes, needs, objectives, programs, functions and services.

NOW, THEREFORE, BE IT RESOLVED, that the TEC Member does request that the TEC include its stated needs for all categories of electricity and/or natural gas goods and services, on the TEC’s procurement solicitations and award contracts for those items, whereby the TEC Members may be allowed to purchase those items from the TEC’s contracts; and that the TEC is authorized to sign and deliver all necessary requests and other documents in connection therewith for and on behalf of the TEC Members that have elected to participate.

FURTHER, BE IT RESOLVED, that the Board of Directors of the TEC Member does hereby authorize its Board President, Superintendent or the Superintendent’s designee to execute the Interlocal Participation Agreement and any other agreements or documents necessary to carry out the TEC Member’s participation and to make budgeted purchases of electricity and natural gas from energy providers procured by TEC.

FINALLY, BE IT RESOLVED that the execution of this Resolution shall evidence the election of TEC Member and eligible local governments to become members of the TEC upon the terms and conditions stated. The Board of Directors has and at the time of

adoption of this Resolution had, full power and lawful authority to adopt the foregoing Resolution and to confer the obligations, powers and authority to the persons named, who are hereby granted the power to exercise the same.

I certify that the foregoing is a true and correct copy of the resolution duly adopted by _____, local government on the _____ day of _____, 20____, and that the same now appears of record in its official minutes.

Adopted and approved this _____ day of _____ 20____.

_____, TEC Member

By: _____ Date: _____
(Its Representative)

Title _____

ATTEST:

_____ Date: _____
(Secretary of the Board)