

# Electricity Aggregation Agreement

This Electricity Aggregation Agreement (Agreement) is made and entered into by and between \_\_\_\_\_, a political subdivision and local governmental entity (Entity), and the Texas Association of School Boards, Inc. (TASB), a Texas nonprofit, tax-exempt corporation. Each, acting through its duly authorized representative, does hereby agree as follows:

WHEREAS, TASB is registered as an aggregator with the Public Utility Commission (License No. 80034) and desires to function as a buyer's agent that joins more than one customer together as a single purchasing unit to negotiate the purchase of electricity on behalf of the participating members;

WHEREAS, TASB has a service agreement with The Local Government Purchasing Cooperative, an Interlocal Cooperation Act administrative agency of the participating local governments (hereinafter "Cooperative"), to assist participating members in the TASB Aggregation Pools in reducing the cost of electricity through preventing duplicate efforts in the procurement process, achieving efficiencies, and taking advantage of the potential economies of scale in cooperating and collaborating with other local governments;

WHEREAS, the Interlocal Participation Agreement executed by the Entity to participate in the Cooperative allows the selected Retail Electric Provider to pay TASB a portion of the gross commodity sales revenue generated through the awarded contract;

WHEREAS, Entity desires to become a participating local government of a single purchasing unit to negotiate and purchase electricity;

WHEREAS, the Entity governing board authorizes the Superintendent/Chief Executive Officer, or designee, to execute a contract, for a period of more than 12 months if it is in the best interest of the entity, with TASB and with the Retail Electric Provider selected by the Cooperative through a competitive process;

NOW, THEREFORE, the Parties agree as follows:

## 1. Scope of Agreement

As set forth in this Agreement, the Parties agree that TASB, as an aggregator, shall join Entity with other political subdivisions to create purchasing units ("TASB Aggregation Pools") for the purchase of electricity. When requested by TASB from time to time, Entity shall execute a document stating whether the Entity desires to continue in the TASB Aggregation Pools and if so, the term for which the Entity commits its electricity requirements to the TASB Aggregation Pools ("Letter of Commitment"). TASB shall use a competitive process to recommend to the Cooperative the selection of a provider of retail electricity services ("Retail Electric Provider") to serve the TASB Aggregation Pools for a defined term.



TASB shall participate in and monitor the wholesale electricity purchases by the Retail Electric Provider for the TASB Aggregation Pools and shall make commercially reasonable efforts to work with the Retail Electric Provider to offer Entity opportunities to manage its electricity costs during the term selected by the Entity in the Letter of Commitment.

## **2. Term of Agreement**

This Agreement shall be in effect for an initial term of twelve months, and shall then continue month to month unless terminated by either TASB or Entity upon 45 days prior written notice to the other party, provided, however, that this Agreement shall continue in effect during the term specified by the Entity in a Letter of Commitment and shall continue to apply to all of Entity's Electricity Supply Agreements (if any) then in effect until all such Electricity Supply Agreements terminate or otherwise expire.

## **3. TASB Responsibilities**

- a. TASB shall perform the following services:
  1. Retain consultants and legal counsel with appropriate expertise to provide the necessary services to assist TASB in its responsibilities under this Agreement.
  2. Conduct a competitive procurement process on behalf of Entity and in accordance with the Interlocal Cooperation Act and other applicable state law, to select a Retail Electric Provider to serve all the TASB Aggregation Pools for a defined term not longer than three years.
  3. Negotiate the terms of a standard contract ("Electricity Supply Agreement") to be used by the Entity for its purchase of electricity from the Retail Electric Provider selected by Cooperative on behalf of Entity.
  4. Participate in and monitor the Retail Electric Provider's procurement of wholesale electricity to serve the TASB Aggregation Pools and assist the Retail Electric Provider in its selection of wholesale suppliers.
  5. Use commercially reasonable efforts to work with the selected Retail Electric Provider to manage the procurement of electricity for Entity in a manner that provides the Entity reasonable budget certainty for each budget cycle while looking for opportunities to lower Entity's electricity costs if and when possible during the three year term.
- b. TASB shall not be responsible for addressing customer service issues relating to Entity's electric service that occur during the term of the Electricity Supply Agreement. Entity shall resolve such issues directly with its local utility or the Retail Electric Provider, as appropriate.



#### 4. Entity Responsibilities

- a. The Entity shall perform the following:
  1. Execute, if it has not already done so, the Interlocal Participation Agreement with The Local Government Purchasing Cooperative .
  2. Execute the Letter of Commitment attached to this Agreement. By executing the Letter of Commitment, the Entity commits to the TASB Aggregation Pools all of Entity's electricity requirements for all of its accounts for the time period selected by the Entity in the Letter of Commitment, which time period shall begin after the expiration of Entity's current electricity supply contract. Entity shall also execute future Letters of Commitment whenever provided by TASB to Entity, which shall be in substantially the same form as the Letter of Commitment attached to this Agreement. Executed Letters of Commitment shall be considered incorporated into and made a part of this Agreement for all purposes. If TASB has not received an executed Letter of Commitment by the due date stated on the Letter of Commitment, it shall be treated as though the Entity has terminated this Agreement and Entity's accounts shall not be included in a TASB Aggregation Pool.
  3. Provide a Letter of Authorization ("LOA") authorizing the release of historical account information to TASB or its designee with a listing of customer account information (including, but not limited to, ESI ID number, address, current rate schedules under which service is provided, and billing and load data, such as energy and demand usage and associated charges for the previous 12 months' electric usage by individual meter) to be used in the procurement of electricity on behalf of Entity. Entity is responsible for entering this customer account information in a standardized electronic format to be provided by TASB, by the date provided to Entity by TASB. Entity shall be responsible for the accuracy of such data. **Neither TASB nor other members of the TASB Aggregation Pools will be liable for any costs incurred by Entity as a result of errors in its account information or historical load data provided to TASB.**
  4. If requested by TASB, execute authorization for a Retail Electric Provider or Providers to obtain Entity's electricity usage data from the Entity's local utility.
  5. Cooperate with TASB during the term of this Agreement, including, specifically, not entering into any other alternative electricity supply arrangements for the Entity's electricity requirements committed under subsection (a)(2) of this section.
  6. Execute the Electricity Supply Contract from the Retail Electric Provider selected by the Cooperative as a result of a competitive process to purchase electricity to satisfy Entity's entire electricity requirements committed under Subsection (a)(2) for the time period selected by the Entity in the Letter of Commitment and commencing on the expiration of Entity's current electricity supply contract.



7. Notify TASB in the event that Entity has or obtains new or additional metered accounts during the term of the electricity supply contract so that the new or additional metered accounts may be added into the TASB Aggregation Pool and served under applicable competitive market prices and other terms of the existing contract with the Retail Electric Provider awarded by the Cooperative.
- b. By approving this Agreement, the Entity's governing board authorizes the Superintendent/ Chief Executive Officer, or designee, to execute the Letter of Commitment with TASB and the Electricity Supply Contract, 12 months or longer, with the Retail Electric Provider as awarded by the Cooperative.

## **5. Consideration**

In consideration for the services provided by TASB under Section 3 of this Agreement, TASB shall be entitled to receive \$0.15 per kilowatt-hour of Entity's electricity usage, up to a cap of \$10,000.00 collected from Entity during per twelve month period. This fee shall be included in the electric commodity price stated in the Electricity Supply Contract to be entered into between the Entity and the selected Retail Electric Provider. The selected Retail Electric Provider will be responsible for the collection of this fee from the Entity and the payment of the fee to TASB. Any amounts above \$10,000.00 collected from Entity by the Retail Electric Provider during a twelve month period for the TASB fee shall be refunded to Entity by the Retail Electric Provider. TASB shall track the fees paid by Entity and shall instruct the Retail Electric Provider to make such a refund if a refund is necessary.

## **6. Default and Remedies**

- a. It shall be considered a Default of this Agreement if Entity: (i) fails to provide its customer account information as set forth above in Section 4(a); (ii) fails to execute the electricity supply contract negotiated by TASB as set forth above in Section 4(a) within the timeframe permitted by the Retail Electric Provider awarded by the Cooperative; or (iii) enters into an electricity supply agreement with a Retail Electric Provider other than the Retail Electric Provider awarded by the Cooperative for any of Entity's electricity requirements during the Term of this Agreement.
- b. In the event of a Default by Entity, TASB shall provide Entity with notice of such Default. If Entity has not cured such Default within seven (7) calendar days after receipt of such notice, then a breach will have occurred and TASB may (i) suspend performance under this agreement and/or (ii) terminate this agreement without further liability for TASB. If TASB terminates this agreement under this section, it shall determine whether it or other members of the TASB Aggregation Pools incurred additional costs, including a higher price for electricity from the Retail Electric Provider, or lost revenue to TASB, as a result of Entity's Default and shall calculate such costs and lost revenue to determine the damages owed by Entity to TASB as a result of Entity's breach. Entity shall pay TASB the damages within fifteen (15) days of receipt of the damages calculation from TASB.



## 7. Agency

a. Entity hereby appoints TASB as its special agent with the authority, and only such authority as is necessary to:

- (1) select a Retail Electric Provider for Entity; and
- (2) negotiate certain standard terms of the Electricity Supply Agreement to be used by Entity for its purchase of electricity from the selected Retail Electric Provider.

b. TASB is solely authorized to perform the above-referenced acts, and possesses no other authority with which to act on behalf of Entity. TASB is negotiating the term of a standard Electricity Supply Agreement for all members of the TASB Aggregation Pool and is not providing specific expert or legal advice to Entity. TASB is a special agent of Entity with only the authority necessary to perform the acts explicitly set forth above.

c. The special agency and authority granted to TASB by Entity under this Agreement terminates immediately upon the execution by Entity of the Electricity Supply Agreement.

## 8. Miscellaneous

- a. *Warranties.* TASB provides the services hereunder without warranty of any kind, either express or implied, including, but not limited to, warranties of title or implied warranties of merchantability or fitness for a particular purpose. Without limiting the foregoing, no warranty is made that operations will be error free or uninterrupted.
- b. *LIMITATION OF LIABILITY.* IN NO EVENT SHALL TASB, INCLUDING ITS RESPECTIVE OFFICERS, TRUSTEES, EMPLOYEES, REPRESENTATIVES, AFFILIATES, OR PROVIDERS, BE LIABLE FOR ANY INJURY, DEATH, LOSS, CLAIMS, DAMAGE, ACT OF GOD, ACCIDENT, DELAY, OR ANY SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, THAT ARISE OUT OF OR ARE IN ANY WAY CONNECTED WITH ANY SERVICES PROVIDED UNDER THIS AGREEMENT, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- c. *Law.* This Agreement will be construed in accordance with the laws of the State of Texas, and services rendered hereunder are deemed performed in Travis County, Texas.
- d. *Representation.* The person executing this Agreement on behalf of Entity represents that he or she has the authority to enter into this Agreement on behalf of Entity and that all necessary administrative procedures, policies, and laws prerequisite have been complied with and that the governing body of Entity is bound by such execution of this Agreement. Entity specifically represents that it is a member of the Cooperative.



- e. *Effective Date.* This Agreement will become effective upon the latest date executed by the parties.

The parties, intending to be legally bound, do, acting through their authorized representatives, affix their signatures as evidence of their mutual agreement.

_____	Texas Association of School Boards, Inc.
Entity Name	
_____	_____
<i>Authorized Representative</i>	<i>Authorized Representative</i>
_____	_____
<i>Title</i>	<i>Title</i>
_____	_____
<i>Date</i>	<i>Date</i>

Entity Contact:	_____
Address:	_____
Telephone:	_____
E-mail:	_____
FaxNumber:	_____

# Letter of Commitment To TASB Electricity Aggregation Pool

(Please Mark Appropriate Boxes)

## COMMITMENT TO PARTICIPATE

I am providing the Texas Association of School Boards ("TASB") this binding commitment that the independent school district (ISD) or other entity listed below will participate in the next TASB Electricity Aggregation Pool for the term selected below. I also hereby authorize my local distribution utility to release my electricity demand and usage data for the previous 12 months as indicated on the Letter of Authorization form.

### PLEASE SELECT ONE BELOW.

**12 MONTHS:** I commit my entire electricity requirements for all of my accounts to the TASB Aggregation Pool for the 12 months following the expiration of my current electricity supply agreement.

**24 MONTHS:** I commit my entire electricity requirements for all of my accounts to the TASB Aggregation Pool for the 24 months following the expiration of my current electricity supply agreement.

**36 MONTHS:** I commit my entire electricity requirements for all of my accounts to the TASB Aggregation Pool for the 36 months following the expiration of my current electricity supply agreement.

## NOTICE OF TERMINATION

I hereby am providing TASB with my official written notice to terminate my current Electricity Aggregation Agreement with TASB and to not include my entity in the next TASB Electricity Aggregation Pool. I will be procuring my own electricity upon expiration of my current electricity supply contract.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Name of ISD or Political Subdivision: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

E-mail: \_\_\_\_\_

Date: \_\_\_\_\_

**PLEASE COMPLETE AND EMAIL OR FAX TO TASB**

**EMAIL: [buyboard@tasb.org](mailto:buyboard@tasb.org)**

**FAX: 800-211-5454**



**Texas Association of School Boards**