

SHARED SERVICES ARRANGEMENT
INTERLOCAL ELECTRICITY PROCUREMENT AGREEMENT

These Terms and Conditions for the Supply of Electricity ("Terms"), together with any Offer for Supply of Electricity ("Offer") and any other attachments, exhibits or appendices (including, as appropriate, one or more Price Sheets) as may be hereafter agreed to by Keller Independent School District ("Buyer") (the term "Buyer" includes its employees and/or agents as appropriate), and Energy for Schools ("Agent") (the term "Agent") includes its assignees and/or as appropriate its employees, agents and/or subcontractors), shall constitute the "Agreement" for the supply of electricity and ancillary services to all facilities of Buyer (the "Premises"). Buyer and Agent may hereinafter be referred to as the "Party" or "Parties". "Premise(s)" herein shall mean the designated property or facilities and associated metered account(s) identified by an Electric Service Identifier ("ESI"), which is a unique and permanent identifier assigned to each Premise(s). A "Price Sheet(s)" is a document(s) containing a description of the method for determining charges payable by Buyer for electricity delivered pursuant to this Agreement for specified Premises and shall contain the Offer Price. A condition precedent for the effectiveness of the Agreement shall be the execution of a separate Offer and the appropriate Price Sheet(s), which are attached hereto as Attachment "A".

- I. **AGENCY.** Buyer hereby appoints Agent as Lead Administrative Organization for the Shared Services Arrangement (SSA) cooperative and the Agent's Board of Directors as the Board of Managers of the SSA. The SSA Board of Managers shall be responsible for financial management of the SSA.

Buyer also appoints Agent as its agent to negotiate the purchase of electricity, ancillary services, or other energy related products and services to encourage efficiency of operation and conservation of energy on behalf of the Buyer.

- II. **SUBJECT MATTER AND QUANTITY.** Agent shall negotiate the sale and delivery of electricity and ancillary services from the REP and, by issuing an order, resolution, purchase order or other binding agreement, Buyer shall contract with and purchase from the REP, for use only at the Premise(s), Buyer's electricity requirements set forth in the Offer attached hereto.

- III. **TERM.** The "Agreement Term" shall be the time period, as referred to in the Offer, during which the prices contained in the Price Sheets are and shall remain in force. The date of initial deliveries under this Agreement is dependent on the processing of the switching request submitted to the Electric Reliability Council of Texas ("ERCOT"), the date the meter is read by the transmission and distribution service provider ("TDSP") and approvals of any regulatory body, if any.

- IV. **TERMINATION OF AGREEMENT.** This Agreement may be terminated at any time after the date hereof by either Party if there has been a failure to perform or a material misrepresentation or breach of warranty, covenant or condition on the part of either Party herein, and such failure or breach is not cured by the breaching Party within (30) days of the breaching Party's receipt of written notice of the alleged breach from the non-breaching Party. A material breach of this Agreement includes: (a) the failure of a Party to comply with any other material term of this Agreement; (b) a Party becomes or declares that it is insolvent or bankrupt, or becomes or declares that it is the subject of any proceedings, or is taking any action whatsoever, relating to its bankruptcy, liquidation or insolvency, or is not generally paying its debts as they become due, or (c) a Party fails to comply with any federal, state or local law, regulation, rule or order that causes a material adverse effect upon this Agreement, either Party or either Party's performance of its obligations described in this Agreement.

- V. **FORCE MAJEURE.** If either Party is unable to perform its obligations in whole or in part due to an event of force majeure as defined herein, then the obligations of the affected Party shall be suspended to the extent made necessary by such event. The term “force majeure” means any cause not within the control of the Party claiming relief, including, but not limited to, Acts of God, including magnetic disturbances but not including extremes of temperature alone; civil disorder; strikes or labor disputes; failure, repair or change of or obstruction in electric power lines, equipment or machinery; epidemics; landslides, lightning, earthquakes, fires, storms, hurricanes and threats of hurricanes, floods and washouts; arrests, orders, requests, directives, restraints and requirements of the government and governmental agencies, either federal or state, civil and military; failure of necessary transmission or distribution facilities that prevents the delivery of electricity hereunder; demonstrable outages of computer control equipment and/or databases and telecommunication equipment necessary for transmission or receipt of electronic control signals; depletion or failure of electric supply; an event of force majeure of the transmission and distribution service provider (“TDSP”); fluctuations in power supply, or demands in excess of the capacity of TDSP’s equipment or power lines; or any other cause which by the exercise of reasonable diligence such Party could not have prevented or is unable to overcome. Any such event of force majeure shall, so far as possible, be remedied with all reasonable dispatch. It is understood and agreed that the settlement of strikes or lockouts will be entirely within the discretion of the Party having the difficulty, and that the above requirement of the use of diligence in restoring normal operating conditions will not require the settlement of strikes or lockouts by acceding to the terms of the opposing party when such course is inadvisable in the discretion of the Party having the difficulty.
- VI. **FINANCIAL EXIGENCY.** In the event that, through no action initiated by Buyer, Buyer’s governing body does not appropriate funds for the continuation of this Agreement for any fiscal year after the first fiscal year, and it has no funds to do so from other sources, this Agreement may be terminated. To effect this termination, Buyer shall, 30 days prior to the beginning of the fiscal year for which its governing body does not appropriate funds, send Agent written notice stating that its governing body failed to appropriate funds. Buyer’s notice shall be accompanied by payment of all sums then owed Agent under this Agreement. Buyer shall certify that the canceled purchase of electricity and ancillary services is not being replaced by a supply of electrical and ancillary services during the next ensuing fiscal year.
- VII. **WARRANTIES AND LIMITATIONS OF LIABILITIES.** AGENT EXPRESSLY DISCLAIMS AND MAKES NO WARRANTIES, WHETHER WRITTEN OR VERBAL, FOR OR WITH RESPECT TO ITS SUPPLY OF ELECTRICITY OR OTHER OBLIGATIONS UNDER THIS AGREEMENT, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS, IMPLIED, OR STATUTORY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Unless otherwise expressly provided herein, any liability under this Agreement will be limited to direct actual damages as the sole and exclusive remedy (including reasonable attorneys’ fees), and all other remedies or damages at law or in equity are waived. Neither Party will be liable for consequential, incidental, punitive, exemplary or indirect damages, including lost profits or other business interruption damages, whether in tort or contract, under any indemnity provisions or otherwise in connection with this Agreement. The limitations imposed on remedies and damage measurement will be without regard to cause, including negligence of any Party, whether sole, joint, concurrent, active or passive; provided no such limitation shall apply to damages resulting from the willful misconduct of any Party.

VIII. NOTICES. All notices required or permitted under this Agreement shall be in writing and shall be deemed to be delivered when deposited in the United States mail (first class, registered or certified), postage prepaid, when deposited with an overnight delivery service, prepaid to the applicable Buyer's or Agent's address shown in the Offer, or to such address as either Party may from time to time designate as the address, or in the case of hand delivery, when delivered to a representative of either Party by a representative of the other Party; provided, however, except for payments of amounts due hereunder, either Party may provide such items hereunder by electronic mail or facsimile to the other Party at the applicable telephone number shown on the current Offer, and further provided, the original copy of such item shall be sent to the other Party within three business days thereafter.

IX. APPLICABLE LAW AND REGULATIONS. This Agreement is subject to all applicable laws, regulations, rules and orders. In the event a judicial decision, order, new law or regulation, or a change in any law or regulation, requires a change in the method by which prices are calculated under this Agreement, or materially affects a Party's ability to perform its obligations hereunder, then the Party that is negatively affected shall have the right to notify the other Party, within thirty calendar days after becoming aware of such detrimental change. The Parties shall attempt to negotiate a modification to the terms of this Agreement so as to mitigate the impact of the event. If, after twenty calendar days beyond the date of notice, the Parties have been unable to negotiate a mutually satisfactory modification to the terms of this Agreement, either Party shall have the right to terminate this Agreement upon ten calendar days prior written notice to the other Party. If such right to terminate is not exercised within forty-five calendar days after the date of the original notice hereunder, then the right to terminate this Agreement shall be waived with respect to the particular event. In the event that the Agreement is terminated pursuant to Article VIII, neither Party shall have any obligation to the other Party after the date of termination other than to fulfill obligations incurred or arising prior to the termination.

X. INDEMNIFICATION. Buyer assumes full responsibility for electric energy furnished to Buyer at and on Buyer's side of the Point of Delivery, and agrees to and shall, to the extent permitted by Texas law, indemnify, defend, and hold harmless Agent, and all of its respective officers, directors, associates, employees, servants, and agents (hereinafter collectively referred to as "Agent Group"), from and against all claims, losses, expenses, damages, demands, judgments, causes of action, and suits of any kind (hereinafter collectively referred to as "Claims"), including Claims for personal injury, death, or damages to property occurring on Buyer's side of the Point of Delivery and upon the Premise(s), arising out of or related to the electric power and energy and/or Buyer's performance under the Agreement.

Buyer acknowledges and understands that (i) Agent never obtains legal title, physical possession or control of the electricity, (ii) Agent does not own nor have control of the electric transmission wires and equipment, and that they are owned and/or controlled by the TDSP, (iii) all meter reading, and repair services will be provided by employees or agents of the TDSP, (iv) all responsibilities and liabilities of the TDSP are set forth in the tariff regulations as approved by the PUCT, and (v) the employees and agents of the TDSP are not employees or agents of Agent. Agent shall not have any obligation whatsoever to indemnify, defend, nor hold harmless Buyer, and all of its respective officers, directors, shareholders, associates, employees, servants, and agents (hereinafter collectively referred to as "Buyer Group"), against any Claims, on either side of the Point of Delivery, arising out of or in any way related to the electricity and/or the delivery thereof, including, without limitation, the actions of the TDSP and its employees and agents, except in the event, and only in the event, that such Claims are the direct result of the sole negligence and/or intentionally wrongful act of an employee, or agent under the exclusive control, of Agent.

XI. MISCELLANEOUS.

TDSPs. Buyer agrees to all terms and conditions of the TDSPs that provide electricity delivery services to the Premise(s) or other Buyer facilities, which may from time to time be amended, and are made part of this Agreement.

Confidentiality. This Agreement and its terms are confidential except to the extent disclosure is necessary for its implementation or disclosure is required by law.

Choice of Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas without giving effect to any conflicts of law principles which otherwise might be applicable. Venue shall be in any court of competent jurisdiction within the County of Harris, Texas.

Assignment. This Agreement shall inure to and be binding upon the Parties hereto, and their respective successors and assigns. Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

Entirety of Agreement. It is the intention of the Parties that the Agreement shall contain all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of the electricity, and supersedes all prior agreements, whether written or oral. This Agreement may not be modified or amended except in writing, duly executed by the Parties hereto. Buyer warrants that the information supplied by it pursuant to this Agreement is true and shall remain so throughout the term of the Agreement unless varied by agreement.

Waiver of Rights. A waiver by either Party of any breach of this Agreement, or the failure of either Party to enforce any of the terms and provisions of this Agreement, will not in any way affect, limit or waive that Party's right to enforce and compel strict compliance with the same or other terms or provisions of this Agreement.

Third Party Rights. Nothing in this Agreement shall create, or be construed as creating, any express or implied rights in any person or entity other than the Parties.

Survival. No termination or cancellation of this Agreement will relieve either Party of any obligations under this Agreement that by their nature survive such termination or cancellation, including, but not limited to, all warranties and obligations of indemnity.

Further Assurances. Buyer agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the Agent which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

Distribution System. Each of the Parties undertakes to comply with Buyer's TDSP's Tariff for Distribution Service.

Delivery of Electricity. Agent does not guarantee against irregularities or interruptions, it being understood that occasional irregularities and interruptions are inevitable. Buyer is responsible for installing and maintaining protective devices as recommended or required by the then current edition of the National Electric Code and other such devices as are necessary to protect equipment

or process during irregular or interrupted service including, but not limited to voltage and wave from irregularities.

Resale of REP's Electric Service. Buyer may not use supply of electricity provided by the REP except for the purpose specified in the Price Sheet under which Buyer receives supply of electricity. Buyer may not resell or otherwise dispose of supply of electricity unless as provided by statute or as specifically provided for in the Price Sheet.

Disputes. Neither Party shall be obligated to arbitrate any dispute arising hereunder, but both Parties shall seek to resolve legitimate disputes in good faith.

Authorization. At such time as executed Offer and Price Sheet(s) are attached hereto, Buyer authorizes the REP to become Buyer's new REP in place of Buyer's current REP for the duration of the Agreement Term set forth in the Offer. Buyer authorizes Agent to effect the change, and Buyer directs its current REP to work with Agent to effectuate this change. Buyer represents to Agent that Buyer is legally authorized to change the REP for all of the Premises.

The Parties have signed this Interlocal Electricity Procurement Agreement, acknowledging their agreement to its provisions as of August 26, 2008.

POLITICAL SUBDIVISION (BUYER)

Signature: _____

Printed Name: Bob Apetz

Title: President, Board of Trustees

Date: _____

ENERGY FOR SCHOOLS (AGENT)

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Fax signed copy to Energy for Schools at 281-647-7754.

Mail original to:

**Energy for Schools
16300 Katy Freeway, Suite 140
Houston, Texas 77094**