

THE PURCHASING COOPERATIVE

Constitution and By-Laws

Preamble

The Purchasing Cooperative (“Cooperative” or “TPC”) is comprised of Illinois school districts created by intergovernmental agreements of participating school district members to facilitate in a cost efficient manner the purchase of perishable food, commodities, goods and services pursuant to Section 10-20.21 of the Illinois School Code Section (105 ILCS 5/10-20.21); the National School Lunch Act (42 U.S.C. 1751 et seq.); the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); the School Breakfast Program (42 U.S.C 1773); the Summer Food Service Program for Children (42 U.S.C. 1761); the Child and Adult Care Food Program (42 U.S.C. 1766); and the federal and state regulations promulgated pursuant to said Acts as well as the applicable procurement requirements including, but not limited to, those set forth in 2 CFR 200.318-326 . All Illinois school districts which agree to become a member district of this Cooperative pursuant to adoption of the Resolution and Intergovernmental Agreement, attached hereto as Appendix A, in the manner prescribed by law shall be bound by and shall comply with the Constitution and By-Laws contained herein. Such member school districts agree the name of this cooperative shall be “The *Purchasing Cooperative*” and may be referred to herein as “Cooperative” or abbreviated as “TPC”.

1. PURPOSE

- 1.1 The general purpose of the Cooperative is to provide a separate legal and administrative entity to exercise legal authority to jointly obtain the benefits and efficiencies by Illinois school districts participating in a common effort to (a) comply with applicable governmental procurement requirements in the purchase of perishable food and beverages and other commercial food items, including through programs and subsidies of the United States

Department of Agriculture (USDA) or other governmental bodies; (b) identify qualified vendors of commodities, goods and services that will meet the needs of Cooperative Members; (c) relieve or ease the burden of the governmental purchasing function by promoting administrative efficiency and intergovernmental cooperation; (d) realize the economies of scale, including administrative and other cost savings, that can be achieved from volume purchasing on a national scale; (e) issue requests for proposals (RFPs) as appropriate to secure the services of Group Purchasing Organizations, Buying Organizations or Third-Party Vendors for the provision of third party purchasing services for procurement of perishable food and perishable beverages; and (f) develop and implement any bidding or other competitive procurement practices as required by law or regulation to further and advance the purposes set forth herein. This Cooperative is not and shall not be construed to be a general partnership, limited partnership, joint venture, corporation, agricultural cooperative, fiduciary trust, common law trust, business trust, investment company or joint stock company.

2. MEMBERSHIP AND MEMBERSHIP REQUIREMENTS

- 2.1.1 Membership in the Cooperative is open to any Illinois public school district. Membership becomes effective upon adoption as required by law, executing, and submitting the Resolution and Intergovernmental Agreement (IGA) attached hereto as Appendix A by April 1 to the Fiscal Agent, New Berlin CUSD.
- 2.1.2 Membership in the Cooperative is for a single fiscal year from July 1st through June 30th. Unless a school district withdraws, membership shall rollover from fiscal year to fiscal year without the necessity of adopting and executing a new Resolution and IGA.
- 2.1.3 Each District is entitled to one vote. The Superintendent, or his /her designee, shall be the school district representative who shall be authorized to cast any vote on behalf the member school district.
- 2.1.4 Applications for membership by a school district must be accepted by a majority vote of the Cooperative Executive Committee.
- 2.1.5 New Berlin CUSD is designated as the Fiscal Agent and shall have all reasonable and necessary administrative authority to implement the purposes of this Constitution and By-Laws and pursuant to direction of the Executive Committee. The New Berlin Superintendent is designated as the Chair of the Executive Committee.
- 2.1.6 The general membership of the Cooperative shall meet at least annually and at other times as the need arises and as determined by the Executive Committee. Attendance at any such meeting may be by telephonic or electronic means.
- 2.1.7 Any school district may withdraw as a member of the Cooperative by submitting a written letter of withdrawal to the Fiscal Agent by February 1 of

the year immediately preceding the next fiscal year and withdrawal shall be effective on June 30. The failure to submit a withdrawal letter by February 1 of any year shall be deemed to constitute a renewal of Cooperative Membership by any school district for the next fiscal year beginning July 1.

- 2.1.8 The Fiscal Agent shall hold any monies received from TPC's activities in a separate account and shall expend such funds only pursuant to an affirmative vote of a majority of the Executive Committee representatives for a reasonable and necessary business expense of the Cooperative. The Executive Committee will strive to minimize all costs and expenses of the Cooperative. In the event Cooperative business expenses exceed the total monies collected, any expenses above that sum necessary to maintain and implement that purpose of the Cooperative must be approved by two-thirds (2/3) of the Executive Committee representatives. Upon such approval, the total expenses will be divided equally among all member districts and invoiced accordingly. All such sums shall be paid to the Fiscal Agent within thirty (30) calendar days of receipt of the billed invoice amounts.
- 2.1.9 Failure by a school district to comply with the conditions of this Constitution and By-Laws shall cause a warning letter to be sent by the Executive Committee demanding compliance. Failure to cure a compliance default within a reasonable time defined by the Executive Committee may subject member to expulsion upon a two-third (2/3) vote of the Executive Committee representatives.

3. EXECUTIVE COMMITTEE

- 3.1.1 The Executive Committee shall include the Founding school district members, which include New Berlin CUSD No. 16, Scott-Morgan CUSD No. 2 Triopia CUSD No. 27, Franklin CUSD No. 1, and A-C Central CUSD No. 262. The Superintendent, or his/her designee, from each of these school districts shall be the representatives of these school district members on the Executive Committee.
- 3.1.2 Election to the Executive Committee will be upon a majority vote of the member representatives of the Executive Committee. The Executive Committee may add school district member representatives on such conditions as the Executive Committee deems necessary and appropriate.
- 3.1.3 The Fiscal Agent shall be New Berlin Community School District #262. In the event the New Berlin school district resigns the duties of Fiscal Agent, the Executive Committee shall by majority vote select a successor school district Cooperative member as Fiscal Agent.
- 3.1.4 Powers of the Executive Committee include, but are not limited to:
- 1) Approving, establishing and implementing procedures and practices for the procurement of all goods and services as required by law, including, but not limited to, drafting procedures, specifications, requests for proposals, instructions to bidders/vendors as applicable;

- 2) Making decisions related to the operation of Cooperative;
- 3) Developing request for proposals, policies, procedures, and guidelines for the Cooperative;
- 4) Ensuring that financial audits required by law are performed;
- 5) Acting on any other matter of Cooperative business; and,
- 6) Taking all actions authorized by law necessary and proper to implement the purposes of the Constitution and By-Laws; and,
- 7) Authorizing, when prudent, distributions of Cooperative funds to Cooperative members that are deemed to be in excess of the ordinary and necessary operating expenses of the Cooperative business; and,
- 8) Developing a plan in the event of the Cooperative's dissolution and termination that appropriately winds down the Cooperative's business and equitably distributes any excess funds, after all legal debts and obligations have been paid, to the Cooperative members.

3.1.5 The Executive Committee shall meet as needed by the call of the Chair or by a majority of the Executive Committee representatives.

3.1.6 New Berlin School District shall serve as Treasurer of the Cooperative as part of the duties of being the Fiscal Agent.

3.1.7 The Executive Committee and Cooperative Members shall comply with the provision of the *Illinois Open Meetings Act* and *Illinois Freedom of Information Act* as required by law.

4. BOOKS, RECORDS AND MISC. PROVISIONS

4.1.1 The Cooperative shall keep books and records of account, minutes of the meetings of the Executive Committee and Cooperative members as required by law. The fiscal Agent shall be the custodian of all Cooperative books, records, and meeting minutes.

4.1.2 Any notice required or permitted by these By-Laws to be given to a Cooperative Member, or other person, may be given in person or by U.S. mail, facsimile, email or other mode of delivery typically used in commerce and accessible to the intended recipient. If mailed, a notice is deemed delivered when deposited in the U.S. mail addressed to the person at his or her address as it appears in the Cooperative's records, with postage prepaid. If given by facsimile, a notice is deemed delivered when printed confirmation of receipt is obtained from the transmitting mechanism. If given by email, a notice is deemed delivered at the moment it is sent. A person or entity may give notice of a change in address in writing to the Fiscal Agent.

4.1.3 If the conclusion of any time period provided for herein falls on a weekend or a federal holiday, the conclusion of such time period shall be deemed to be extended until the next business day. Otherwise, references to time periods measured by days shall mean calendar days unless business days are specifically designated.

4.1.4 These By-Laws shall be construed under the laws of the State of Illinois. All references in these laws to statutes, regulations, or other sources of legal

authority will refer to the authorities cited, or their successors, as they may be amended from time to time.

- 4.1.5 To the greatest extent possible, these By-Laws shall be construed to conform to all legal requirements for obtaining and maintaining all tax exemptions that may be available to unregistered entities, such as the Cooperative.
- 4.1.6 If any By-Laws provision is held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision, and the By-Laws will be construed as if they had not included the invalid, illegal, or unenforceable provision.
- 4.1.7 To the greatest extent authorized by law, no provision of these By-Laws or any agreement or policy approved by the Executive Committee shall be construed to waive the governmental immunity afforded to the Cooperative and any Cooperative Member under law. The Cooperative, its Board, agents and representatives, and Cooperative Members retain all governmental and official immunities conferred by law.
- 4.1.8 The Cooperative will not hold members of the Board, its officers and agents or representatives liable for acts taken in good faith and reasonably within the Cooperative's best interest.
- 4.1.9 The Cooperative shall indemnify, defend, and hold harmless (with or without insurance) all representatives and/or agents, to the fullest extent permitted by law, in any claim, litigation, or other proceeding and cover all reasonable expenses, including, but not limited to, attorney's fees, costs, judgments, settlement payments and penalties. The Executive Committee may have the Cooperative indemnify, defend and hold harmless its Fiscal Agent or any representative it deems appropriate, to the extent permitted by law.

5. TERMINATION AND DISSOLUTION

- 5.1.1 Termination of the Cooperative shall only occur by action of a two-thirds (2/3) majority of the entire General Membership. Notwithstanding anything contained herein to the contrary, upon dissolution of the Cooperative, assets will be first used to pay all debts and obligations of the Cooperative and any remaining funds shall be distributed to the Cooperative Members under a formula of distribution which shall be determined by the Executive Committee at the time of dissolution. The precise formula of distribution shall set forth the amount of distribution and the Cooperative Members eligible to such distribution.

6. AMENDMENTS TO BY-LAWS

- 6.1.1 These By-Laws may be amended by the affirmative two-third (2/3) vote of the entire Executive Committee. The Executive Committee must not take final action to adopt any amendment until at least ninety (90) days have elapsed from the date the Executive Committee initially received notice of the material terms of such proposed amendment. The Executive Committee may waive this 90-day waiting period by unanimous consent.