



Tejas School Services **Purchasing Cooperative**

INTERLOCAL AGREEMENT

for the

Tejas School Services Purchasing Cooperative

This Interlocal Agreement (“Agreement”) is entered into among the undersigned local governments of the State of Texas (“Cooperative Members”, collectively, the “Parties”). The purpose of this Agreement is to form and operate the Tejas School Services Purchasing Cooperative (the “Cooperative”) 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 Cooperative Members.

WITNESSETH:

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

WHEREAS, the Cooperative Members intend to hereby form a purchasing cooperative of local governments cooperating in the discharge of their governmental functions; and

WHEREAS, it is to the mutual benefit of the Cooperative Members to join together to establish and operate a cooperative program;

NOW BE IT RESOLVED, that the undersigned Cooperative Member in consideration of the mutual benefits, promises and covenants set forth herein hereby agree as follows:

1. **ADOPT INTERLOCAL PARTICIPATION AGREEMENT.**

1.1 Each Cooperative Member by the adoption and execution of this Interlocal Agreement agrees to become a Cooperative Member.

1.2 The Purpose of this Interlocal 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

Cooperative Members.

1.3 The Cooperative Members do not intend by entering this Agreement or otherwise to create a separate or additional entity.

1.4 The Cooperative's address will be the address of the Fiscal Agent.

2. **ITEMS AND SERVICES TO BE PURCHASED.** It is understood and agreed by the parties to this Agreement that the following classes of items and services, and such other items as may be designated in writing by the Cooperative Member, may be purchased jointly for the academic year including, but not limited to:

- a. Dry groceries
- b. Frozen foods
- c. Refrigerated products
- d. Paper and disposables
- e. Meat and seafood
- f. Beverages
- g. Fresh produce
- h. Eggs
- i. Equipment
- j. Janitorial and cleaning supplies necessary to the operation of the breakfast/lunch, after school, and snack programs
- k. Milk and other dairy products
- l. Bread and baked products
- m. Snack items
- o. Carbonated beverages
- p. Smallwares and safety supplies
- q. Candy
- r. Commodity processing
- s. Commodity delivery and storage
- t. Other food and non-food items as approved by the Board.

These items will be referred to in this Agreement as the "Purchased Items."

No single Cooperative Member will be required to purchase any particular item or items in any category of the Purchased Items. Rather, each Cooperative Member will be free to order, upon the award of a food and supplies contract by the Cooperative on behalf of the Cooperative Member, such item or items in any category of the Purchased Items as it individually considers to be economical and cost effective to so purchase.

3. **GOVERNANCE.** The Cooperative shall be governed by a Board of Trustees ("Board") in accordance with the Bylaws. The first Board shall be elected by simple majority vote of the cooperative Members prior to the commencement of

Cooperative business.

4. **BOARD QUALIFICATIONS.** Each member of the Board must be either an elected official or employee of a Cooperative Member. Any Board member who, at the time of appointment, is an elected official or employee of a Cooperative Member and who vacates that position, shall be deemed to have vacated the position on the Board, and the position shall be deemed vacant at that time.
5. **COMPOSITION OF BOARD.** The Board shall be made up of five (5) members elected by the individual Cooperative Members. No Cooperative Member shall have more than one member on the Board.
6. **VACANCY.** Any vacancy on the Board shall be filled by the Board. Each vacancy on the Board shall reduce full membership of the Board by one (1) until such time as the vacancy is filled.
7. **REMOVAL.** Any Board member who is absent from three consecutive regularly scheduled meetings may be subject to removal from the Board by a majority vote of the remaining Board members.
8. **TERM OF THE BOARD.** Board members shall serve a 3 year terms, on a rotating basis. The terms of the initial Board and the rotation shall be determined by drawing lots as follows: two members shall serve one year terms, one member shall serve a two year term, and two members shall serve three year terms. No person shall serve more than two consecutive terms as a Board Member.
9. **MEETINGS.** The Board shall hold an annual meeting and may hold additional meetings as set out in the Bylaws.
10. **QUORUM AND VOTING.** A majority of members of the Board shall constitute a quorum. When a quorum exists, concurrence of a majority of those present and voting at any Board meeting shall be necessary for any official action taken by the Board.
11. **OFFICERS.** The Board shall, at its annual meeting, elect one of its members Chair, another of its members Vice Chair, and a Secretary, who may or may not be a member of the Board.
12. **EXPENSE REIMBURSEMENT.** The appointed, qualified, and acting members of the Board shall serve without compensation, but shall be entitled to reimbursement of actual, necessary, and reasonable expenses incurred in the performance of his or her duties.
13. **POWERS AND DUTIES.** The Board, in addition to other powers and duties

herein conferred and imposed or authorized by law, shall have the powers and duties set out in the Bylaws, which shall be exercised in the accomplishment of the Cooperative's public purpose. Neither the Board nor its officers or members is empowered to enter into any bonds, notes, pledges of assets or other evidences of indebtedness.

14. **FISCAL YEAR.** The Fiscal Year of the Cooperative shall be as set out in the Bylaws.
15. **BYLAWS.** Bylaws shall be adopted by a majority vote of all of the Board Members. The Cooperative Member agrees to abide by the Bylaws of the Cooperative, as adopted and as they may be amended, and any and all reasonable policies and procedures established by the Cooperative.
16. **CONSULTANT HIRED.** The Board will select, on behalf of the Cooperative Members, in compliance with applicable law, a professional food services management consultant. The consultant's contract will be negotiated by the Board on behalf of the Cooperative Members. The Consultant will advise the Cooperative regarding the needs of the Members and the mechanics of bulk purchasing. The consultant selected must have demonstrated experience and must have a working familiarity with the purchasing habits and requirements of the Cooperative Member.
17. **CONSULTANT DUTIES.** The consultant hired will advise the Board in its preparation of bid specifications for the Cooperative Members on a "requirements" or "term" basis for each academic year, and in its advertising of those specifications, and the consultant will also perform other tasks assigned to it by the Board. For example, the consultant may contact individual Cooperative Members to ascertain each district's food and supply needs for that academic year. The consultant will provide any technical assistance requested by the Council for bid evaluation and for negotiation of the final contract with the bidder. The Consultant will prepare and submit, on behalf of the Cooperative, any reports or applications required by federal or state law or Cooperative policy.
18. **PREPARATION OF BID SPECIFICATIONS.** Specifications for purchase of items covered under this Agreement or by supplementary written agreements of the Cooperative Members will be approved by the Board.
19. **RESPONSIBILITY FOR ADVERTISING AND ADMINISTRATIVE FUNCTIONS.** The Board will be responsible for the advertisement of bids and such other administrative duties as may be necessary to facilitate the processing and preparation of bid requests.

20. **RESPONSIBILITY FOR RECEIVING BIDS AND AWARDING CONTRACTS.** The Board will be responsible for receiving, opening, and evaluating the bids. The Board will award, on behalf of the Cooperative, a contract or contracts to that bidder or to those bidders who the Board determines will provide the Cooperative Members the best value for the Purchased Items, in addition to meeting the ordering, payment and delivery terms appropriate to the Cooperative Members. The Board will negotiate the terms of such contract(s) with the selected vendor or vendors on behalf of the Cooperative Members. This Agreement specifically grants to the Board the authority to consider the bids of national food distributors received in response to its advertisements. Copies of the bids received will be provided to any Cooperative Member requesting such copies.
21. **ADMINISTERING THE CONTRACTS.** The Board will administer the contract or contracts awarded to the selected vendors and will notify the selected vendors should any systemic instances of poor quality, shortages, or other supply or quality problems occur.
22. **INDIVIDUAL RESPONSIBILITY FOR ORDERING, PAYMENT AND DELIVERY.** The Cooperative Members agree that the ordering of the Purchased Items through this Agreement will be their Individual responsibility and that the selected vendors will bill each Cooperative Member directly for the items ordered by it. The Cooperative Members ordering the Purchased Items will have sole responsibility for payment for those items. The Cooperative Members ordering items through this Agreement will take direct delivery for those items.
23. **NO ADDITIONAL LIABILITY.** Each Cooperative Member will be liable to the selected vendors only for the Purchased Items ordered and received by it, and will not by the execution of this Agreement (or by any service on the Board) assume any additional liability except as set out herein.
24. **OTHER INDIVIDUAL PURCHASES ALLOWED.** Nothing in this Agreement will prevent any Cooperative Member from accepting and awarding bids for commodities subject to this Agreement individually and on its own behalf, provided, however, that invitations for such individual bids shall not be advertised nor shall bids be received individually during the period in which the Board is advertising for and receiving bids for the same commodities, except in the case of emergency or hardship.
25. **RESOLUTION OF INDIVIDUAL DISPUTES.** In the event that any dispute arises between a Cooperative Member and a selected vendor, that dispute will be resolved by and between the individual Cooperative Member and the vendor.
26. **FISCAL AGENT**

26.1 Huntsville ISD will serve as the Fiscal Agent for the Cooperative.

26.2 The Fiscal Agent is responsible for applying for, receiving, collecting, expending, and distributing all funds, regardless of source, in accordance with the budget adopted by the Board. The Fiscal Agent shall provide accounting services, reports, Cooperative records, and shall perform any other responsibilities required by Cooperative Bylaws.

26.3 The Fiscal Agent must notify other member districts of any intention to withdraw as fiscal agent of the Cooperative by January 1 preceding the end of the last fiscal year it intends to serve as Fiscal Agent. After a satisfactory independent audit of the Cooperative's accounts, the transfer of Fiscal Agent status will become effective July 1.

26.4 Should the Fiscal Agent cease for any reason to serve, the Cooperative Board will by majority vote appoint another member district as Fiscal Agent.

27. **TERM.** The initial term of this Agreement shall commence at 12:01 a.m. on the 1st day of January, 2008, and continue until 12:01 a.m. of the 31st day of December, 2008, unless sooner terminated as provided herein. This Agreement shall automatically renew for successive one-year terms unless sooner terminated in accordance with the provisions of this Agreement. The conditions set forth herein shall apply to the initial term and all renewals.

28. **COOPERATIVE MEMBER TERMINATION.**

28.1 **By the Cooperative Member.** This Agreement may be terminated by the Cooperative Member at any time by thirty (30) days prior written notice to the Cooperative.

28.2 **By the Cooperative.** The Cooperative may terminate this Agreement by:

- (1) Giving ten (10) days notice by certified mail to the Cooperative Member if the Cooperative Member fails or refuses to make the payment on charges; or
- (2) Giving thirty (30) days notice by certified mail to the Cooperative Member if the Cooperative member fails to abide by this Agreement or the Bylaws of the Cooperative.

28.3 **Termination Procedure.** If the Cooperative Member terminates its participation during the term of this Agreement or breaches this Agreement, or if the Cooperative terminates participation of the

Cooperative Member under any provision of this Article, the Cooperative Member shall bear the full financial responsibility for any purchases occurring before the termination date, and for any unpaid charges accrued during its term of membership in the Cooperative. The Cooperative may seek the whole amount due, if any, from the terminated Cooperative Member.

29. **COOPERATIVE TERMINATION.** Notwithstanding anything contained herein to the contrary, upon dissolution of the Cooperative, assets will first be used to pay all debts and obligations; remaining Cooperative assets shall be distributed prorata to such Cooperative Members which are Cooperative Members for the year of dissolution. The precise formula for distributions, and the timing thereof, shall be determined by the Board.
30. **COSTS.** The Cooperative Member agrees to pay its prorated share of Cooperative Expenses as determined herein. The prorated amount shall be calculated based on the percentage of total purchases of Purchased Items attributable to the individual Cooperative Member during the period beginning September 1 and ending August 31 of the proceeding year. In accordance with Chapter 791.011(d)(3) of the Act, all payments due under this contract will be made from current revenues available to the Cooperative Members. Cooperative Expenses shall mean the necessary and reasonable expenses incurred by the Board in order to carry out its duties as described herein and shall include the fees of its consultant, accountant and attorney.
31. **COOPERATIVE REPORTING.** The Cooperative shall provide periodic activity reports to the Cooperative Members. These reports may be modified from time to time as deemed appropriate by the Cooperative.
32. **COMPENSATION.** The parties agree that the payments under this Agreement and all related exhibits and documents may not exceed an amount that fairly compensates the Cooperative for the services or functions performed under the Agreement.
33. **COOPERATION AND ACCESS.** The Cooperative Member agrees that it will cooperate in compliance with any reasonable requests for information and/or records made by the Cooperative. No request is reasonable if the request requires action that is contrary to state or federal law or other administrative rules and regulations.
34. **COORDINATOR.** The Cooperative Members agree to appoint through its board of trustees, or the board's designee, a program coordinator who shall have express authority to represent and bind the Cooperative Member as to purchases and other such daily business that is directly related to the operations of the Cooperative.

35. **INDEMNIFICATION.** To the extent permitted by applicable law, but without waiver or expansion of any limits established by the Texas Tort Claims Act, each party to this Agreement will indemnify and hold harmless the other parties and their trustees, officers, employees and agents, from and against any and all claims proximately caused by negligence, breach, or other act or omission by the indemnifying party or its trustees, officers, employees, or agents.
36. **PERSONAL LIABILITY OF COOPERATIVE BOARD MEMBERS.** The Cooperative will not defend nor indemnify any member of the Cooperative Board who is sued as a consequence of his or her activities in the discharge of duties as a Cooperative Board Member of the Cooperative. Costs of such defense and indemnification shall be the responsibility of the Cooperative Board Member's employing school district.
37. **SEVERABILITY.** In the event any term, covenant, or condition herein contained shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant, or condition contained herein and the Parties agree that all remaining provisions of this Agreement will remain in effect.
38. **WRITTEN AMENDMENT.** This Interlocal Agreement may be amended only by written instrument approved by the board of trustees, or the board's designee, of all Cooperative Members.
39. **SUCCESSORS.** This Interlocal Agreement will apply to and bind the representatives and successors in interest of the parties to this Agreement.
40. **NO WAIVER OF IMMUNITY.** No party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees, and agents as a result of its execution of this Agreement and performance of the covenants contained herein.
41. **MERGER.** This Interlocal Agreement merges the prior negotiations and understandings of the parties hereto and embodies the entire agreement of the parties, and there are no other agreements, assurances, conditions, covenants (express or implied), or other terms with respect to the covenants, whether written or verbal, antecedent or contemporaneous, with the execution hereof.
42. **VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and venue shall lie in Williamson County, Texas.
43. **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.

44. **AUDITS.** The Cooperative shall require an annual audit of the financial statements of the Cooperative by a Certified Public Accountant. Cooperative Member may audit the accounts of the Cooperative annually during normal business hours and upon reasonable notice for an accounting period not to exceed twelve (12) months.
45. **COUNTERPARTS.** It is understood and agreed that this Interlocal Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, the Cooperative Member, acting through its duly authorized representatives, signs this Agreement as of June 16th, 2008.

TO BE COMPLETED BY COOPERATIVE MEMBER:

Keller Independent School District

By: _____ Date: 6-16-08
Signature of authorized representative of Cooperative Member

Lori Tudor, Director of Purchasing
Printed name and title of authorized representative

Coordinator for the
Cooperative Member is:

Lori Tudor
Name

350 Keller Parkway
Street Address

Keller
City

Texas, 76248
(zip)

817-744-1132
Telephone

817-745-1706
Fax

Lori.tudor@kellerisd.net
Email

(Signature page to Interlocal Agreement for the Tejas School Services
Statewide Purchasing Cooperative)



Tejas School Services **Purchasing Cooperative**

BOARD RESOLUTION

of

Keller Independent School District

Cooperative Member

WHEREAS, the Keller Independent School District, a “local government,” (hereinafter “Cooperative Member”) pursuant to the authority granted by Article 791 et seq. of the Interlocal Cooperation Act, as amended, desires to participate in the statewide purchasing program of the Cooperative.

WHEREAS, the Cooperative Member has elected to be a Cooperative Member in the Tejas School Services Statewide Purchasing Cooperative (hereinafter “Cooperative”), a program created by school districts in accordance with and pursuant to the Interlocal Cooperation Act (“Act”), Chapter 791, Texas Government Code;

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

WHEREAS, the Cooperative Member desires to participate and join with other School District in a cooperative 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 Cooperative Member does request that the Cooperative include its stated needs for all categories of food service goods and services, on the Cooperative’s Purchasing Program and award contracts for those items, whereby the Cooperative Members may be allowed to purchase those items from the Cooperative’s contracts; and that Cooperative is authorized to sign and deliver all necessary requests and other documents in connection therewith for and on behalf of the Cooperative Members that have elected to participate.

FURTHER, BE IT RESOLVED, that the Board of Trustees of the Cooperative Member does hereby authorize its Board President, Superintendent or other officer to execute the

Interlocal Agreement for the Tejas School Services Purchasing Cooperative attached hereto as Exhibit A.

FURTHER, BE IT RESOLVED, by the Board of Trustees of the Cooperative Member that the Interlocal Agreement for the Texas School Services Purchasing Cooperative attached hereto as Exhibit A supersedes and makes void any prior Interlocal Agreement for the Tejas School Services Purchasing Cooperative approved by the Board.

FINALLY, BE IT RESOLVED, that the execution of this Resolution shall evidence the election of Cooperative Member to become a member of the Cooperative upon the terms and conditions stated. The Board of Trustees 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 the Keller Independent School District, local government on the 16th day of June, 2008 and that the same now appears of record in its official minutes.

Adopted and approved this 16th day of June, 2008.

Keller Independent School District, Cooperative Member

By: _____

Date: _____

Its Representative

Board President

ATTEST:

Date: _____
Secretary of the Board