



June 5, 2008

Ms. Paula Renken  
Superintendent  
Brackett Independent School District  
P.O. Box 586  
Brackettville, Texas 78832-0586

Dear Ms. Renken:

We hope your school year is going well and would like to thank you again for your continued support of Energy for Schools (EFS). I want to make you aware of a new value-added opportunity for our Member districts. Energy for Schools is establishing a Shared Services Arrangement (SSA) option that will be available to our Members.

The Texas Legislature has strongly encouraged school districts to improve administrative efficiency through participation in SSA's, defined as an agreement between two or more school districts that provides services for participating districts. To further promote SSA's, the Legislature required in 2006 that the Texas Education Agency (TEA) include recognition for SSA's in Schools FIRST, the Financial Integrity Rating System of Texas. Included in the types of administrative "services" available through SSA's are various administrative functions, including purchasing.

To ensure the success of our SSA, EFS solicited the legal and financial expertise of our attorney, David Thompson of Bracewell & Giuliani LLP, and Tom Canby of the Texas Association of School Business Officials (TASBO). We also met with Texas Education Agency (TEA) staff to discuss offering the SSA procurement model to our Members and TEA confirmed that our proposed model complies with the rules governing SSA structure.

The EFS Shared Services Arrangement option can provide added value for EFS Members by:

- Improving performance under certain indicators in Schools FIRST and potentially higher financial ratings. Payments made by Member districts to the EFS SSA fiscal agent will be recorded under function code 93, in accordance with generally accepted accounting principles (GAAP).
- Improving administrative efficiency resulting in lowering of total costs for administrative and support functions.
- Eliminating redundant administrative tasks and activities in Member districts
- Sharing the SSA Management's expertise in the procurement of utility services.
- Reducing costs through the cooperative purchasing of equipment, supplies, and services that encourage energy efficiency and conservation. Expenditures for these items purchased through the EFS SSA may also be recorded under function code 93.

- Redirecting economic resources to the classroom and other beneficial areas.

The following options and changes in procedures will be implemented for those Members who choose to participate in the SSA:

- The Interlocal Electricity Procurement Agreement (Agreement) we currently have in place must be amended to include language that appoints EFS as the Lead Administrative Organization of the SSA and authorizes the EFS Board of Directors to serve as the Board of Managers of the SSA cooperative. The amended Shared Services Arrangement Interlocal Electricity Procurement Agreement must be approved by your Board of Trustees. (attached)
- Deer Park ISD, an EFS Member district, has agreed to serve as the fiscal agent for the SSA, so Members will make checks for electricity services payable to Deer Park ISD instead of Reliant Energy. Payment through electronic transfer will be available, as it is now.
- TASBO will provide financial review of all SSA transactions and PEIMS reporting. TASBO will also provide training on SSA accounting topics

Participation in the SSA is optional for our Members. We will continue to maintain our current structure for our Members who choose to not participate under the SSA option. All EFS members, regardless of SSA participation, will continue to receive EFS benefits such as exemption from Gross Receipts Tax and PUC Assessment Fees, contract renewal incentives, and discount payment options, all of which save our Members millions of dollars a year. Member districts will not incur any additional costs as a result of this change.

If your district decides to participate in the SSA option, you should plan to place an action item on your next board meeting agenda to approve the amended EFS Agreement (attached). Members who choose to immediately seek Board approval of the amended Agreement at their June board meetings should fax the signed document to us as soon as it is approved by your Board. We will be sending an information packet to all Members the week of June 16<sup>th</sup> that includes training dates for your staff and other pertinent information related to sign-up procedures for the training Webinars that will be provided by TASBO. The first Webinar is scheduled for Thursday, June 26<sup>th</sup>

Thank you again for your continued support. You have our commitment that we will continue to seek value-added opportunities for EFS Members to ensure available dollars can be used in the classroom. Please contact me at 281-647-7750 or [fdelaro@energyforschools.org](mailto:fdelaro@energyforschools.org) if you have questions.

Sincerely,



Frank DeLaro, Ed D.  
Energy for Schools

ATTACHMENTS:

Revised Interlocal Electricity Procurement Agreement  
Question & Answers Regarding the EFS SSA

**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 \_\_\_\_\_ ("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 form 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 \_\_\_\_\_, 2\_\_\_\_\_.

**POLITICAL SUBDIVISION (BUYER)**

**ENERGY FOR SCHOOLS (AGENT)**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

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

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

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**

# ENERGY FOR SCHOOLS (EFS) SHARED SERVICES ARRANGEMENT (SSA)

## Questions and Answers

**1. Is there a cost for my district to participate in the SSA?**

No. There is no cost for Member districts to participate in the SSA. Any cost to implement the SSA will be paid by EFS.

**2. Is this SSA only for the purchase of electricity?**

No. The SSA will continue to purchase electricity for its Member districts and will issue RFP's for equipment, supplies, and other services that encourage energy efficiency and conservation. SSA members will be able to purchase these items from vendors selected through the RFP process.

**3. What are the benefits of choosing the SSA option over the current model?**

- a. Improved performance under certain indicators in Schools First and potential higher financial ratings. Payments made by Member districts to the EFS SSA fiscal agent will be recorded under function code 93, in accordance with generally accepted accounting principles (GAAP).
- b. Expenditures for equipment, supplies, and services that are purchased through the SSA may also be recorded under function code 93.
- c. School districts will receive assistance from TASBO with financial accounting and reporting activities involving energy-related transactions. TASBO will also provide training on SSA financial accounting topics.

**4. Do I have to participate in the SSA?**

No. EFS Member districts do not have to participate in the SSA. Your district can choose to continue under the current membership arrangement and still receive all EFS benefits and services.

**5. If my district chooses the SSA option, can we withdraw later?**

Yes. Member districts that choose to participate in the SSA can later rescind that decision and return to the current arrangement.

**6. If my district chooses not to participate now, can we join later?**

Yes. Member districts can choose to join the SSA at any time by having the district's Board of Trustees approve the amended Interlocal Electricity Procurement Agreement.



## **7. What are the steps to join the SSA?**

To participate in the SSA you will need to do the following:

- a. Your district's Board of Trustees will first need to approve the amended Shared Services Arrangement Interlocal Electricity Procurement Agreement (Agreement). Current Offer and Strike Price Sheets will remain in effect. The Agreement appoints EFS as the Lead Administrative Organization of the SSA and EFS's Board of Directors as the Board of Managers of the SSA, both of which are required by the rules governing SSA's. The amended Agreement also expands the products and services that will be made available to Member districts through the SSA, including equipment, supplies, and services that encourage energy efficiency and conservation.
- b. Return the executed Agreement to Energy for Schools.
- c. Have appropriate district staff participate in SSA training provided by TASBO. The training will explain how to code SSA expenditures to Function 93.
- d. All payments for electricity will be made payable to Deer Park ISD, the fiscal agent for the SSA. Electronic transfer will be available, as it is now.

## **8. How will training for my staff be accomplished?**

Training for your staff will be provided through TASBO, primarily through Webinars.

## **9. When can my district begin participating in the SSA?**

Your district can begin participating in the SSA as soon as your Board of Trustees approves the amended Agreement and it is returned to EFS. EFS will send an information packet to all members the week of June 16, 2008 that includes training and information about how to budget for payments to the SSA fiscal agent. The first Webinar training provided by TASBO is scheduled for June 26<sup>th</sup> and additional training opportunities are scheduled for July 16, July 30, August 14, and August 27.

## **10. If I send my electricity payment to Deer Park ISD instead of Reliant Energy, who do I call if I have a billing or other question?**

Contacts for billing or other questions will remain the same:

Billing questions:

Reliant Energy Solutions  
Local Phone: 713-497-4141  
Toll-Free Phone: 888-256-8108  
Department Fax: 888-858-5447  
Department Email: [solutions@reliant.com](mailto:solutions@reliant.com)

All other questions:

Energy for Schools  
Local Phone: 281-647-7750  
Fax: 281-647-7754  
Frank DeLaro – [fdelaro@energyforschools.org](mailto:fdelaro@energyforschools.org)  
Mike Griffin – [mgriffin@energyforschools.org](mailto:mgriffin@energyforschools.org)  
Dayna Kelly – [dkelly@energyforschools.org](mailto:dkelly@energyforschools.org)