

Member hereby adopts and approves the Organizing Agreement dated June 1, 2004, together with such amendments as may be made in the future.

3. **Term of Agreement.** The initial term of this Agreement shall be one (1) year from the date it is executed and signed, and shall automatically renew for successive one (1) year terms upon each anniversary of the commencement date unless sooner terminated in accordance with the provisions of this Agreement. The terms, conditions, and general provisions set forth below shall apply to the initial term and all renewals.

4. **Termination.**

By the Cooperative Member. This Agreement may be terminated by the Cooperative Member at any time with thirty (30) days notice by certified mail to the Cooperative. All charges owed to the Cooperative and any vendors must be paid before termination is effective.

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 payments or contributions as herein provided; or (2) giving thirty (30) days notice by certified mail to the Cooperative Member.

Payments due upon Termination. 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 after 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. The Cooperative Member will not be entitled to a refund of membership dues paid.

5. **Payments.** The Cooperative Member agrees to pay membership fees based on a plan developed by the Cooperative. Membership fees are payable to the Cooperative upon receipt of an invoice by the Cooperative Member. A late charge amounting to the maximum interest allowed by law, but not less than the rate of interest under Section 2251.021, et seq., Texas Government Code, shall begin to accrue daily on the 31st day following the due date and continue to accrue until the contribution and late charges are paid in full. The Cooperative reserves the right to collect all funds that are due to the Cooperative in the event of termination by Cooperative Member or breach of this Agreement by Cooperative Member.

The Cooperative Member will make timely payments to vendors for the goods, materials and services received in accordance with the terms and conditions of the procurement documents. Payment for goods, materials and services and inspections and acceptance of goods, materials and services ordered by the procuring party shall be the exclusive obligation of the procuring Cooperative Member.

6. **Amendments.** The Council may amend this agreement upon sixty (60) days notice to each Cooperative Member prior to the effective date of such amendment.

GENERAL PROVISIONS

1. **Authorization to Participate.** Each Cooperative Member represents and warrants that its governing body has duly authorized its participation in the Cooperative.
2. **Bylaws.** The Cooperative Member agrees to abide by the Bylaws of the Cooperative, as they may be amended, and any and all reasonable policies and procedures established by the Cooperative.
3. **Compensation.** The Cooperative Member agrees that the payments under this Agreement and all related documents are amounts that fairly compensate the Cooperative for the services and functions it performs and enable the Cooperative to pay necessary expenses required to operate a statewide purchasing cooperative for local governments of Texas.
4. **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. The Cooperative reserves the right to audit the relevant records of any Cooperative Member. Any breach of this provision shall be considered material and shall make the Agreement subject to termination on ten (10) days written notice to the Cooperative Member.
5. **Coordinator.** The Cooperative Member agrees to appoint a program coordinator who shall have express authority to represent and bind the Cooperative Member, and the Cooperative will not be required to contact any other individual regarding program matters. Any notice to or any agreements with the coordinator shall be binding upon the Cooperative Member. The Cooperative Member reserves the right to change the coordinator as needed by giving written notice to the Cooperative. Such notice is not effective until actually received by the Cooperative.
6. **Purchased Items.** The following classes of items, and such other items as may be designated in writing by the Cooperative Members, may be purchased jointly for the academic year.
 - 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 and smallwares
- j. Janitorial and cleaning supplies necessary to the operation of the breakfast and/or lunch programs
- k. Milk and other dairy products.
- l. Bread
- m. Snack cakes
- n. Packaged chips
- o. Carbonated beverages
- p. Candy

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 such item or items in any category of the Purchased Items as it individually considers to be economical and cost effective to so purchase.

7. **Billing and Delivery.** Cooperative Members are individually responsible for ordering Purchased Items and the successful bidder or bidders will bill each Cooperative Member directly for the items ordered. Cooperative Members will take direct delivery of Purchased Items.
8. **Other Individual Purchases Allowed.** Cooperative Members are not prevented from accepting or awarding bids for Items 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 Purchasing Council is advertising for and receiving bids for the same commodities except in the case of emergency or hardship.
9. **Current Revenue.** The Cooperative Member hereby warrants that all payments, contributions, fees, and disbursements required of it hereunder shall be made from current revenues budgeted and available to the Cooperative Member.
10. **Defense and Prosecution of Claims.** The Cooperative Member authorizes the Cooperative to regulate the commencement, defense, intervention, or participation in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution, or other appearances of the Cooperative and/or any past or current Cooperative Member in any litigation, claim or dispute, and to engage counsel and appropriate experts, in the Cooperative's sole discretion, with respect to such litigation, claim or disputes. The Cooperative Member does hereby agree that any suit brought against the Cooperative or a Cooperative Member may be defended in the name of the Cooperative or the Member by the counsel selected by the Cooperative, in its sole discretion, or its designee, on behalf of and at the expense of the Cooperative as necessary for the prosecution or defense of any litigation. Full cooperation by the Cooperative Member shall be extended to supply any

information needed or helpful in such prosecution or defense. Subject to specific revocation, the Cooperative Member hereby designates the Cooperative to act as a class representative on its behalf in matters arising out of this Agreement.

11. **Governance.** The Cooperative Purchasing Council will govern the Cooperative in accordance with the Bylaws. Travis County, Texas will be the location for filing any dispute, claim or lawsuit.
12. **Limitations of Liability.** THE COOPERATIVE, ITS ENDORSERS AND AGENTS DO NOT WARRANT THAT THE OPERATION OR USE OF COOPERATIVE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. THE COOPERATIVE, ITS ENDORSERS AND AGENTS, HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO ANY INFORMATION, PRODUCT OR SERVICE FURNISHED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES AGREE THAT WITH REGARD TO ANY AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER UNDER ANY CIRCUMSTANCES FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
13. **Entire Agreement.** This Agreement, Terms and Conditions, and General Provisions, together with the Bylaws, and Organizing Agreement represent the complete understanding of the Cooperative, and Cooperative Member.
14. **Notice.** Any written notice to the Cooperative shall be made by first class mail, postage prepaid, and delivered to the Chairperson of the Cooperative. All Cooperative Members may be contacted at their address of record below.
15. **Dispute Resolution.** In the event a dispute arises between a Cooperative Member and a vendor, that dispute will be handled by and between the member and the vendor. Any dispute arising between a Cooperative Member and the Cooperative will be addressed through direct discussions. If the dispute is unresolved after direct discussions, the parties to the dispute agree to participate in non-binding mediation.
16. **Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and venue shall lie in Travis County, Texas.
17. **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.

IN WITNESS WHEREOF, the parties, acting through their duly authorized representatives, sign this Agreement as of the date indicated.

LONE STAR PURCHASING COOPERATIVE, acting on behalf of all other Cooperative Members

By:

Elsie Schiro
Chairperson, Lone Star Cooperative
Business Manager
Hitchcock ISD

Date: _____

COOPERATIVE MEMBER,

Keller Independent School District

By:

Richard W. Walker
President, Board of Trustees

Date: _____

Designated Coordinator for the Cooperative Member is:

Vanda Sollenberger

Name

350 Keller Parkway

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