

INTERLOCAL PARTICIPATION AGREEMENT

for the

The Local Government Purchasing Cooperative

This Interlocal Participation Agreement ("Agreement") is made and entered into by and between The Local Government Purchasing Cooperative ("Cooperative"), an administrative agency of cooperating local governments, acting on its own behalf and the behalf of all participating local governments, and the undersigned local government of the State of Texas ("Cooperative Member"). The purpose of this 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.

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 is a local cooperative association as authorized under Section 271.101 of the Local Government Code; and

WHEREAS, the Cooperative Member does hereby adopt the Organizational Interlocal Agreement, together with such amendments as may be made in the future, reflecting the evolving mission of the Cooperative and further agrees to become an additional party to that certain Organizational Interlocal Agreement promulgated on the 26th day of January, 1998.

NOW BE IT RESOLVED that the undersigned Cooperative Member in consideration of the agreement of the Cooperative and the Cooperative Members to provide services as detailed herein does agree to the following terms, conditions, and general provisions.

In return for the payment of the contributions and subject to all terms of this Agreement, the parties agree as follows:

TERMS AND CONDITIONS

1. **Adopt Organizational Interlocal Cooperation Agreement.** The Cooperative Member by the adoption and execution of this Agreement hereby adopts and approves the Organizational Interlocal Agreement dated January 26, 1998, together with such amendments as may be made in the future and further agrees to become a Cooperative Member.

2. **Term.** The initial term of this Agreement shall commence at 12:01 a.m. on the date executed and signed and shall automatically renew for successive one-year terms 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.

3. **Termination.**

(a) **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; provided all charges owed to the Cooperative and any vendor have been fully paid.

(b) **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.

(c) **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 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.

4. **Payments.**

(a) The Cooperative Member agrees to pay membership fees based on a plan developed by the Cooperative. Membership fees are payable by Cooperative Member upon receipt of an invoice from the Cooperative, Cooperative Contractor or vendor. 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.

- (b) The Cooperative Member will make timely payments to the vendor for the goods, materials and services received in accordance with the terms and conditions of the Invitation to Bid and related 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.

5. **Cooperative Reporting.** The Cooperative will provide periodic activity reports to the Cooperative Member. These reports may be modified from time to time as deemed appropriate by the Cooperative.

6. **Administration.** Cooperative Member will use the BuyBoard purchasing application in accordance with instruction from the Cooperative; discontinue use upon termination of participation; maintain confidentiality and prevent unauthorized use; maintain equipment, software and testing to operate the system at its own expense; report all purchase orders generated to Cooperative or its designee in accordance with instructions of the Cooperative; and make a final accounting to Cooperative upon termination of membership.

7. **Amendments.** The Board may amend this agreement, provided that notice is sent to each participant at least 60 days prior to the effective date of any change described in such amendment which, in the opinion of the Board, will have a material effect on the Cooperative Members participation in the Cooperative.

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 parties agree that the payments under this Agreement and all related exhibits and documents are amounts that fairly compensate the Cooperative for the services or functions performed under the Agreement, and that the portion of gross sales paid by participating vendors enables the Cooperative to pay the necessary licensing fees, marketing costs, and related expenses required to operate a statewide system of electronic commerce for the 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 Article 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. **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.

7. **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 in any litigation, claim or dispute which is related to the subject of this Agreement, 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 may be defended in the name of the Cooperative 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.

8. **Governance.** The Board of Trustees (Board) will govern the Cooperative in accordance with the Bylaws. Travis County, Texas will be the location for filing any dispute, claim or lawsuit.

9. **Limitations of Liability.** COOPERATIVE, ITS ENDORSERS (TEXAS ASSOCIATION OF SCHOOL BOARDS, TEXAS ASSOCIATION OF COUNTIES, AND TEXAS MUNICIPAL LEAGUE) AND SERVICING CONTRACTOR (TEXAS ASSOCIATION OF SCHOOL BOARDS) DO NOT WARRANT THAT THE OPERATION OR USE OF COOPERATIVE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

COOPERATIVE, ITS ENDORSERS AND SERVICING CONTRACTORS, 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 IN 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.

10. **Merger.** This Interlocal Participation Agreement, Terms and Conditions, and General Provisions, together with the Bylaws, Organizational Interlocal Agreement, and Exhibits, represents the complete understanding of the Cooperative, and Cooperative Member electing to participate in the Cooperative.

11. **Notice.** Any written notice to the Cooperative shall be made by first class mail, postage prepaid, and delivered to the Associate Executive Director Financial Planning, Texas Association of School Boards, Inc., P.O. Box 400, Austin, Texas 78767-0400.

12. **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.

13. **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.

14. **Legal Authority.** The Cooperative Member represents and warrants to the Cooperative the following:

- a. It meets the definition of “Local Government” or “State Agency” under the Act. “Local Government” means a: county, municipality, special district or other political subdivision of Texas or another state; or combination of two or more of those entities. “Political Subdivision” includes any corporate and political entity organized under state law. “State Agency” means (A) a department, board, bureau, commission, court, office, authority, council, or institution; (B) a university, college, or any service or part of a state institution of higher education; (C) a local workforce development board created under Texas Gov’t Code Section 2308.253; and (D) any statewide job or employment training program for disadvantaged youth that is substantially financed by federal funds and that was created by executive order not later than December 30, 1986; or similar agency of another state.
- b. The functions and services to be performed under the Agreement will be limited to “Administrative Functions” as defined in the Act. “Administrative Functions” means those functions normally associated with the routine operation of government, including tax assessment and collection, personnel services, purchasing, records management services, data processing, warehousing, equipment repair and printing”.
- c. It possesses the legal authority to enter into the Agreement, designates the Cooperative as its agent, and can renew the Agreement without subsequent action of its governing body.
- d. Purchases made under the Agreement satisfy all procedural-procurement requirements that the Cooperative Member must meet under all applicable local policy, regulation, or state law.
- e. All requirements, local or state, for a third party to approve, record or authorize the Agreement have been met.

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

TO BE COMPLETED BY THE COOPERATIVE:

The LOCAL GOVERNMENT PURCHASING COOPERATIVE,
as acting on behalf of all other Cooperative Members

By: _____ Date: _____
Gerald Brashears, Cooperative Administrator

TO BE COMPLETED BY COOPERATIVE MEMBER:

KELLER INDEPENDENT SCHOOL DISTRICT

By: _____ Date: _____,
Signature of authorized representative of Cooperative Member

Printed name and title of authorized representative

Coordinator for the
Cooperative Member is:

Denise Sullivan
350 Keller Parkway
Keller, Texas 76248
817-744-1134 Phone
817-745-1706 Fax
sdsullivan@kellerisd.net

BOARD RESOLUTION

of

KELLER INDEPENDENT SCHOOL DISTRICT

Cooperative Member

WHEREAS, the Keller Independent School District, (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, Keller Independent School District, has elected to be a Cooperative Member in the Local Government Purchasing Cooperative (hereinafter “Cooperative”), a program created by local governments in accordance with and pursuant to the Interlocal Cooperation Act (“Act”), Chapter 791, Texas Government Code and Section 271.101 of the Texas Local 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 local government through the efficiencies and potential savings to be realized; and

WHEREAS, the Cooperative Member desires to participate and join with other local governments 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, including but not limited to, instructional, maintenance, custodial, and 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 Participation Agreement which includes the adoption and approval of the Organizational Interlocal Agreement previously executed and adopted by two or more local governments.

FINALLY, BE IT RESOLVED that the execution of this Resolution shall evidence the election of Cooperative Member and eligible local governments to become members 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 Keller Independent School District, on the _____ day of _____, in the year _____, and that the same now appears of record in its official minutes.

Keller Independent School District, Cooperative Member

By: _____
Authorized Representative

Date: _____

Board President

ATTEST:

Secretary of the Board

Date: _____